

(24,883)

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1916.

No. 221.

THE PENNSYLVANIA RAILROAD COMPANY, LESSEE OF
THE NORTHERN CENTRAL RAILWAY COMPANY,
PLAINTIFF IN ERROR,

vs.

ALBERT G. TOWERS, E. CLAY TIMANUS, AND W. LAIRD
HENRY, CONSTITUTING THE PUBLIC SERVICE COM-
MISSION OF MARYLAND.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF
MARYLAND.

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1 MARYLAND, *sct:*

At the Court of Appeals of the said State begun and held at the City of Annapolis, in and for said State, on the second Monday of January, being the eleventh day of the same month, in the year of our Lord one thousand nine hundred and fifteen and in the one hundred and thirty-ninth year of the Independence of the United States of America.

Were Present:

Chief Judge Boyd, Briscoe, Burke, Thomas, Pattison, Urner, Stockbridge, Constable, Associate Judges.

C. C. MAGRUDER, *Clerk.*

Among other were the following proceedings, to wit:

2 *Transcript of Record from the Circuit Court No. 2 of Baltimore City, in the Case of*

No. 67.

THE PENNSYLVANIA RAILROAD COMPANY, Lessee of the Northern Central Railway Company, Appellant,
vs.

ALBERT G. TOWERS et al., Constituting the Public Service Commission of Maryland, Appellee.

To the Court of Appeals of Maryland.

Bernard Carter & Sons, John J. Donaldson, for Appellant.
W. Cabell Bruce, for Appellee.

3

Bill of Complaint.

(F'd 31st December, 1914.)

In the Circuit Court No. 2 of Baltimore City.

THE PENNSYLVANIA RAILROAD COMPANY, Lessee of the Northern Central Railway Company, Plaintiff,
vs.

ALBERT G. TOWERS, E CLAY TIMANUS, and W. LAIRD HENRY, Constituting the Public Service Commission of Maryland, Defendants.

To the Honorable the Judge of said Court:

The Bill of Complaint of the Pennsylvania Railroad Company, a corporation duly incorporated under the laws of the Commonwealth

of Pennsylvania and Lessee, as hereinafter set forth, of the Northern Central Railway Company, a corporation duly incorporated under the Laws of the State of Maryland, respectfully shows:

1. That this plaintiff is a corporation of the Commonwealth of Pennsylvania, operating lines of railroad in that and other States.

2. That the Northern Central Railway Company is a corporation of the State of Maryland and also of the Commonwealth of Pennsylvania, heretofore operating lines of railway in said States and in the State of New York, and was formed by authority of the Maryland

4 Act of Assembly of 1854, Chapter 250, and appropriate legislation in Pennsylvania, by the consolidation of the Baltimore and Susquehanna Railroad Company (theretofore incorporated by Act of the General Assembly of Maryland, 1827, Chapter 72, and the supplements thereto) with certain other companies therein named.

3. That on or about the 29th day of July, 1914, the Northern Central Railway Company, under authority of the Maryland Act of Assembly of 1908, Chapter 126, now Section 284 of Article 23 of the Code of Public General Laws of Maryland (Bagby's Edition), executed and delivered to this plaintiff a lease of its property and franchises for the term of 999 years, beginning on the first day of January, 1911, as will fully appear by a true copy of said lease filed herewith as part thereof and marked "Plaintiff's Exhibit No. 1."

4. That by reason of the said lease and the legislation authorizing the same, this plaintiff assumed as it is advised and believes all the rights, powers and duties theretofore exercised by the Northern Central Railway Company and imposed on it in the operation of its lines, including those relating to the transportation of passengers and property thereon.

5. That by the terms of the Consolidation Act (1854, Chapter 250), under which the Northern Central Railway Company was formed, that company was "to possess all the corporate powers and privileges, and to be subject to all the duties and obligations not inconsistent with this Act, and its general intent, which are expressed in the Charter heretofore granted to the Baltimore and Susquehanna Railroad Company, and its supplements."

6. That by Section 8 of Chapter 395, of the Acts of Assembly of Maryland of 1838, a supplement to the Charter of the Baltimore and Susquehanna Railroad Company, it was provided "That the president and directors of said company shall have power to charge for the transportation of passengers on their road, any sum of money not exceeding six cents per mile, as in their discretion may seem expedient."

7. That on or about the 16th day of January, 1911, the 30th day of March, 1912, and the 1st day of December, 1913, in compliance with the provisions of Section 15 of Chapter 180 of the

5 Acts of General Assembly of Maryland of 1910 (now Section 427 of Article 23 of the Code of Public General Laws, Bagby's Edition), there were filed with the Public Service Commission of Maryland, consisting of the above named defendants, schedules showing the rates, fares and charges for the transportation of passengers

over its lines within the State of Maryland, and from points within the said State to points on the lines of the Northern Central Railway Company, without the State, a copy of which schedules is herewith filed as part hereof, marked "Plaintiff's Exhibit No. 2"; that these tariffs in due course became effective and remained so until the date next hereinafter referred to.

8. That, as will be seen by reference to said schedule, there was a standard rate of two and one-half cents a mile for all single one-way tickets for one passenger, but there were certain other tickets issued at a reduction from this standard figure, viz:

1. A round-trip ticket at not exceeding $2\frac{1}{4}$ cents a mile, good for day of issue and not exceeding ten days.

2. An excursion ticket, good one way, and return within from two to ten days, at not exceeding $2\frac{1}{4}$ cents per mile.

3. 10 (or more, not exceeding 14) strip one-way tickets, at about 18/10 cents per mile.

4. One hundred trip ticket, good within the year in which issued, at double the 60-trip rate.

5. Sixty trip ticket, good within the month of issue, at two cents a mile for the first three miles and $\frac{1}{4}$ cents for each additional half mile or fraction thereof.

6. One hundred and eighty trip ticket, good within the quarter in which issued, at the same rate as the last named, less 10%.

7. Forty-six trip school ticket, good within the month in which issued, at 46/60 of the sixty trip tickets.

6. Samples of all which reduced rate tickets are herewith filed as part hereof marked "Plaintiff's Exhibits No. 3A, 3B, 3C, 3D, 3F, 3G and 3H."

9. That on or about the 13th day of November, 1914, this plaintiff filed with the Public Service Commission of Maryland a new schedule to become effective on the 15th day of December next following, making no change in the standard rate for single one-way transportation, but making certain changes in the reduced rate tickets above referred to, including the abolition of the excursion ticket and the one hundred trip ticket above referred to; that under this proposed new schedule the special tickets retained were to be as follows, viz:

1. A round trip ticket, good without limit, at twice the standard one-way fare of two and one-half cents a mile.

2. A ten-trip punch ticket, good for bearer for three months at $2\frac{1}{4}$ cents a mile.

3. Sixty-trip ticket, good within the month of issue, at the former rate, plus 25c. flat.

4. One hundred and eighty trip ticket, good within the quarter in which issued, at three times the rate of the last named.

5. Forty-six trip school ticket good within the month in which issued, at 46/60 of the sixty-trip ticket.

All of which will fully appear by a copy of said proposed new schedule, herewith filed as part hereof, marked "Plaintiff's Exhibit No. 4."

10. That after said last mentioned schedule was so as aforesaid

filed, on or about the 25th day of November, 1914, the "Ruxton Improvement Association" and the "Lutherville Improvement Association" filed with the Public Service Commission of Maryland their complaint against this plaintiff, asking that said last mentioned tariff should be suspended and that this plaintiff should not be allowed to make any changes in passenger rates between Parkton, Maryland, and Baltimore City, "until it has been demon-

7 strated to the satisfaction of the Commission that the said increase in rates is necessary in order to permit reasonable revenue for said Northern Central Railroad Company," and that this plaintiff "be not allowed to change the character of tickets now issued by it from various points between Parkton and Baltimore City" and that "specifically it may be required to continue to sell the one hundred trip ticket good for one year between said points," and that the matter should be set for an immediate hearing—all of which will appear more fully by reference to a true copy of said complaint, together with the Commission's order thereon, herewith filed as part hereof, marked "Plaintiff's Exhibit No. 5."

11. That thereafter, within the time limited by the Commission's order in the premises, this plaintiff filed with the Commission its answer to said complaint, whereof a true copy is now herewith filed as part hereof, marked "Plaintiff's Exhibit No. 6."

12. That the matter of said complaint was thereafter by said Commission set for hearing on the 17th day of December, 1914, and was accordingly heard on that day and the day following, evidence being offered by both parties, who were also heard by counsel.

13. That at this hearing plaintiff offered testimony showing that the passenger business on the Baltimore Division of the Northern Central Railway, which runs from Baltimore City, Maryland, to Harrisburg, Pennsylvania, which includes the part of the line between Baltimore City and Parkton, Maryland, referred to in said complaint, had not for sometime past paid the cost of its operation; that the local passenger traffic between Baltimore City and Parkton, Maryland, was during such period run at a still greater proportionate loss, and that travel by the hundred trip ticket at the reduced rate theretofore in use was carried at a still greater proportional loss. That of this evidence no contradiction was offered by the complainants; as will fully appear by a duly authenticated transcript of the evidence taken at said hearing which will be produced before this Court at the hearing of the plaintiff's application for a preliminary injunction herein as well as at the final hearing of this cause.

14. That thereafter, on the 21st day of December, 1914, the said Commission passed an order in the premises requiring 8 this plaintiff to continue the sale of the hundred trip tickets hereinbefore mentioned, and requiring it to sell certain other tickets, viz: The return ticket, the ten-trip ticket, the sixty-trip ticket, the one hundred and eighty trip ticket and the for-y-six trip school ticket at rates lower than those set out in the schedule last as aforesaid filed with said Commission and changing the times

in which the same should be valid; all of which will fully appear by a true copy of said order herewith filed as part hereof, marked "Plaintiff's Exhibit No. 7."

15. That thereafter, on the 23rd day of December, 1914, the said Commission, passed a further order in the premises, providing when its said order should take effect and how long continue, and requiring this plaintiff to file a new schedule of passenger fares in conformity with said order on or before the fourth day of January, 1915, all of which will fully appear by reference to a copy of said last named order, herewith filed as part hereof, marked "Plaintiff's Exhibit No. 8."

16. That on or about the 12th day of December, 1914, and the 23rd day of December, 1914, this plaintiff filed with the Interstate Commerce Commission of the United States a tariff of passenger rates for interstate travel over the lines of the Northern Central Railway (including the Baltimore Division of the same and so the line between Baltimore City and Parkton, Maryland), to be effective on and after the 15th and 27th days of December, 1914, and the said tariffs, not having been either suspended, modified or set aside, accordingly became effective on said last named date and has so remained ever since; that the rates so established are other and higher than those set out in the aforesaid orders of the Public Service Commission of Maryland; all of which will fully appear by a true copy of said tariffs filed with the Interstate Commerce Commission aforesaid, and now in effect, herewith filed as part hereof, marked "Plaintiff's Exhibit No. 9."

17. That on the 12th day of December, 1914, The Public Service Commission of the Commonwealth of Pennsylvania (through which part of the line of the Northern Central Railway runs), having before it the matter of the tariff of passenger rates over said lines and lines of other railroad companies in said State, passed an order therein in conformity with the rates and limitations 9 established by said tariff on file with the Interstate Commerce Commission aforesaid and then and now in effect, as will fully appear by a true copy of said order herewith filed as part hereof, marked "Plaintiff's Exhibit No. 10."

18. That the rates and time limitations of tickets called for by said orders of the Public Service Commission of Maryland are such as would oblige this plaintiff to continue to run the passenger business of the Northern Central Railway lines, and especially the Baltimore Division of the same and of the part thereof between Baltimore and Parkton, Maryland, at a loss, much less allow this plaintiff to receive a fair and reasonable revenue therefrom; and that such rates and limitations relieve certain classes of passenger travel thereon of their fair share of the cost of the same at the expense of the rest; that this plaintiff is therefore advised and believes and accordingly avers that this constitutes an unlawful discrimination and that such orders are therefore void and of no effect.

19. That this plaintiff is advised and believes, and accordingly so avers, that inasmuch as said orders require, by reason of the rates and limitations therein, this plaintiff to carry certain classes of

passengers for a compensation that will not merely fail to give a fair and reasonable return for the service, but fall far short of the same, such orders would constitute, if enforced, a taking of this plaintiff's property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States, as well as of the Constitution of Maryland.

20. That this plaintiff is advised and believes, and accordingly so charges, that inasmuch as other and higher rates were and are in effect as to interstate travel by authority of the Interstate Commerce Commission of the United States, said orders of the Public Service Commission of Maryland, if enforced, would constitute a discrimination against interstate travel in favor of travel within the State of Maryland, and hence are void as being in conflict with the Acts of Congress made by authority of the so-called "Commerce Clause" of the United States Constitution.

21. That, apart from the above considerations, this plaintiff is advised and believes, and accordingly so avers, that the said orders of the Public Service Commission of Maryland are unreasonable and therefore void.

10 To the End therefore,

I. That the said orders of the Public Service Commission of Maryland may be declared void and of no effect and may be set aside by this Court:—

II. And that said Commission, its members and agents or anyone assuming to act by authority thereof may be enjoined from enforcing or attempting to enforce the said orders until the hearing of this cause.

III. And that the said Commission, its members and agents or anyone assuming to act by authority thereof, may be perpetually enjoined from enforcing or attempting to enforce the said orders.

IV. And that this plaintiff may have such other and further relief as its case may require.

May it please your Honor to grant unto this plaintiff the writ of injunction as hereinbefore prayed, and also the writ of subpoena, addressed to the defendants, and each of them, commanding them to be and appear in this Court on some day certain to answer the premises and abide by and perform such decree as may be made therein.

And as in duty, &c., &c.

JNO. J. DONALDSON,
CHARLES H. CARTER,
SHIRLEY CARTER,
For Plaintiff.

STATE OF MARYLAND,

Baltimore City, To wit:

I hereby certify that on this 30th day of December, 1914, before me the subscriber, a notary public of said State, duly commissioned and qualified and residing in said City, personally appeared

11 William Pedrick, Jr., Division Passenger Agent of the Pennsylvania Railroad Company, the above mentioned plaintiff,

and made oath in due form of law that the matters and things stated in the foregoing bill of complaint are true to the best of his knowledge and belief, and that he is such Division Passenger Agent of said plaintiff, and duly authorized to make such affidavit.

As witness my hand and official seal the day and year last hereinabove written.

[SEAL.]

PH. H. HOFFMAN,
Notary Public.

PLAINTIFF'S EXHIBIT No. 3.

(Filed 31st December, 1914.)

Before the Public Service Commission of Maryland.

RUXTON IMPROVEMENT ASSOCIATION, LUTHERVILLE IMPROVEMENT
ASSOCIATION
vs.
PENNSYLVANIA RAILROAD COMPANY.

To the Honorable the Public Service Corporation of Maryland:

The petition and complaint of the Ruxton Improvement Association and the Lutherville Improvement Association of Baltimore County, representing the residents, property owners and committees of Ruxton, Lutherville, Riderwood, Lake and vicinity, of Baltimore County, Maryland, who file this petition on their own behalf, as well as on behalf of all the residents and property owners located along the main line of the Northern Central Railroad in Baltimore County, who may be affected thereby, respectfully shows:

First.

That on the 14th day of November, 1914, the Pennsylvania Railroad Company, the lessee of the Northern Central Railway Company, filed with this Commission a local passenger tariff of commutation fares between stations on the Central Division of said Pennsylvania Railroad Company, which said tariff contains changes in the number and character of tickets issued by the said Pennsylvania Railroad Company, and increases in the fares proposed to be charged along the line of the Northern Central Railway situated in Baltimore County, State of Maryland; the particulars of which tariffs and charges will appear by reference to said local passenger tariff.

Second.

That as will appear by reference to said tariffs, the said Pennsylvania Railroad Company propose to discontinue the sale of the one hundred trip ticket and also the sale of the present strip of ten tickets, substituting in lieu of the latter a ten trip ticket good only for three months. And it further appears that the new schedule

of rates between the various points in Baltimore County and Baltimore City along the main line of the Northern Central Railway are increased in various amounts.

Third.

That a large majority of the people living along said main line of the Northern Central Railway between Parkton, Baltimore County, Maryland, and Baltimore City, are persons engaged in business in Baltimore City, who constantly travel on said railroad, being usually referred to as commuters. That the present tariff of passenger rates now in force, but to be superseded by the new tariff to become effective December 15th, 1914, has been in effect for many years and has been an inducement to said commuters to make their residence along said main line of the Northern Central Railway and 13 to use said road constantly as a means of communication between their place of residence and their place of business. That not only do the said commuters pay to the said Northern Central Railway large sums of money for the *purpose* of tickets for passenger transportation, but in addition by virtue of their residence along said main line, have become large *consumers* of freight which is transported over said Northern Central Railway.

Fourth.

That your petitioners are advised and believe that these proposed rates have been the result of a suggestion of the Interstate Commerce Commission, and your petitioners aver that the Interstate Commerce Commission did not have before it for its consideration at the time of making such suggestion a dividend paying road like the Northern Central Railway, one which is such a tremendous dividend payer that the Pennsylvania Railroad has guaranteed to its stockholders an eight per cent. dividend for nine hundred and ninety-nine years, and which recently distributed from its surplus a 40% dividend to its stockholders.

Fifth.

Your petitioners are further advised that there is now pending before the Interstate Commerce Commission a new application on behalf of the railroads to permit a flat increase in freight rates of five per cent, and your petitioners show that it would be unjust and inequitable to permit this proposed change in passenger rates to become effective until said application to the Interstate Commerce Commission is finally acted upon by said Commission, and your petitioners aver that in the event the said Interstate Commerce Commission should allow said increase in freight rates, it would be unnecessary, according to the showing of the railroads heretofore made to said Interstate Commerce Commission, to increase the passenger rates in order to provide adequate revenue.

Fifth.

Your petitioners further show that the proposed increase in the passenger rates is not uniform and does not follow out the suggestion as heretofore made by the Interstate Commerce Commission 14 in 1910, when the railroads made their first application to said Commission for an increase in freight rates. They then asked for an increase on specific commodities. They did not ask for a straight out increase in all classes of freight. The Commission in reply, said that such increases as were applied for would interfere with the whole system of freight rates; rate making, it said, was a tremendous, complex and interrelated affair. There was no such thing as a simple charge per ton per mile over the whole country, the same everywhere. Questions of competition with other rail and water lines, what the traffic would bear entered into it. Every rate therefore, had a direct relation to every other rate, and if increases on any particular rates were allowed, it would be necessary to change all or many others in order to preserve the general relationship. That was a task of such magnitude that the Commission did not think it advisable to go into it. Bearing this in mind, the railroads when they made their second application for increased rates abandoned their request for specific increases, and asked for a straight increase of five per cent. on all rates. Your petitioners aver that this same principle holds good with passenger rate making, and the main line of the Northern Central Railway Company should not be allowed to increase the monthly ticket five per cent.; the one thousand mile ticket twelve and a half per cent.; the strip ticket from twenty to twenty-five per cent.; the round trip ticket about twenty-five per cent., and by abandonment of the hundred trip ticket, increase the cost to the commuters who have been using that ticket and who might not be daily commuters, about eighty per cent.

Sixth.

Your petitioners aver and charge that the increase in the tariffs filed and to become effective December 15th, 1914, and the withdrawal of the tickets set forth and shown in said tariffs impose rates that are unjust and unreasonable.

Seventh.

Your petitioners further show that the abandonment of the hundred trip tickets is in effect a tremendous increase in rates; for instance as an illustration: the passenger between Baltimore and Ruxton, who now makes twenty trips a month and who surely 15 must be recognized as a commuter, pays \$2.10 for twenty punches on his hundred trip ticket. If the changes proposed

go into effect, he will have to pay \$3.78, a difference of \$1.68, or at the rate of eighty per cent. increase, and the passenger who makes thirty trips a month, that is the man who goes to town and back every other day on a hundred trip ticket — pays \$3.15, must under the new rates buy a monthly ticket at a cost of \$5.50, or an excess of \$2.35, or at the rate of about 75% increase. The wife of a man who travels to town every day, but who herself only goes to town on an average of every other day or every third day will have to pay this same tremendous increase of about eighty per cent. These classes of travelers referred to are not in any sense *that* would be called occasional travelers. The man who travels every other or every three days is as truly a commuter as the man who travels every day.

Your petitioners aver that the effect of this tariff will be grossly discriminatory, as shown, *as* is also in violation of the principle upon which commutations are sold.

Wherefore your petitioners pray that this Honorable Commission may pass orders as follows:

First.

Suspending the operation and effect of said local passenger tariff of the Pennsylvania Railroad Company, filed November 14th, 1914, in so far as it effects the charge, fare and character *on* tickets issued on the main line of the Northern Central Railway between Parkton and Baltimore City, until the new application of the railroads to the Interstate Commerce Commission for an increase in freight rates for the purpose of providing adequate revenue is finally passed upon by said commission.

Second.

That the said Pennsylvania Railroad Company be not allowed to change in any way, or alter the price of tickets now issued by it from various points between Parkton, Maryland, and Baltimore City, until it *was* demonstrated to the satisfaction of your Commission that the said increase in rates is necessary in order to permit reasonable revenue for said Northern Central Railway Company.

That the said Pennsylvania Railroad Company be not allowed to change the character of tickets now issued by it from various points between Parkton and Baltimore City and that specifically it may be required to continue to sell the one hundred trip tickets good for one year between said points.

Fourth.

That this matter be set for an immediate hearing.

Respectfully submitted,

RUXTON IMPROVEMENT ASSOCIATION,
By WM. PINKNEY WHYTE, JR.,
R. BENNETT DARNALL,
SPENCER L. CARTER,
EDWARD G. GIBSON,
ARTHUR C. GIBSON,
Committee.

THE LUTHERVILLE IMPROVEMENT ASSOCIATION,
By WASHINGTON BOWIE, JR.,
JONATHAN K. VOSHELL,
C. F. KIRCHNER,
ROBERT WOODS,
Dr. L. B. WOLFE,
Committee.

EDWARD GUEST GIBSON,
R. BENNETT DARNALL,
WM. PINKNEY WHYTE, JR.,
WASHINGTON BOWIE, JR.,
Counsel.

17 STATE OF MARYLAND,
Office of the Public Service Commission, ss:

I have compared the preceding copy with the original petition and complaint of the Ruxton Improvement Association and the Lutherville Improvement Association of Baltimore County versus Pennsylvania Railroad Company, on file in this office, and I do hereby certify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and the Seal of the Office of the Public Service Commission, at the City of Baltimore, the 28th day of December, one thousand nine hundred and fourteen.

[SEAL.]

B. T. FENDALL, *Secretary.*

PLAINTIFF'S EXHIBIT No. 6.

(Filed 31st December, 1914.)

Before the Public Service Commission of Maryland.

Case No. 865.

RUXTON IMPROVEMENT ASSOCIATION and LUTHERVILLE IMPROVEMENT ASSOCIATION
vs.
THE PENNSYLVANIA RAILROAD COMPANY.

The above named respondent, for answer to the complaint filed in this proceeding, respectfully states:

I. The averments of paragraph one of the complaint are admitted, and leave is craved, in accordance with the suggestion of the 18 complaint, that reference be duly made to the tariffs referred to.

II. The averments of paragraph two of the complaint are admitted.

III. It is admitted that some of the passenger rates now in force in the territory referred to in the complaint have been in effect for some time, and that the persons living in this territory are consumers of freight which to some extent, is transported over the Northern Central Railway, now leased to the Pennsylvania Railroad Company, but this respondent is without information as to the remaining averments of paragraph three of the complaint, and accordingly prays that due proof thereof be required.

IV. It is denied that the proceedings before the Interstate Commerce Commission, referred to in paragraph four of the complaint, did not include the Northern Central Railway. On the contrary, the rates of that company were among the rates considered by the Interstate Commerce Commission.

V. Answering the first paragraph of the complaint numbered five, it is admitted that the Interstate Commerce Commission is considering a petition of certain railroads, including this respondent, for leave to make a flat increase in freight rates of approximately 5%, but it is denied that it would be unjust and inequitable to permit the proposed passenger rates to become effective until after the Interstate Commerce Commission has acted, and it is also denied that the proposed change, would be unreasonable even if the Interstate Commerce Commission should grant the application referred to.

VI. Answering the averments of the second paragraph of the complaint numbered five, this respondent denies that the proposed changes in its passenger rates are improper, unreasonable, discriminatory, or otherwise in violation of law, and on the contrary avers that they are proper, reasonable, and, having regard to the service rendered, are fully justified.

VII. The averments of paragraph six of the complaint are denied.

19 VIII. Answering the averments of paragraph seven of the complaint, it is denied that the proposed changes are unjust, unreasonable, discriminatory, or otherwise in violation of the law.

Wherefore, this respondent prays that the Commission dismiss the complaint filed in this proceeding.

THE PENNSYLVANIA RAILROAD
COMPANY,
By GEO. W. BOYD,
Passenger Traffic Manager;
By D. N. BELL,
General Passenger Agent.

HENRY WOLF BIKLE,
GEORGE STUART PATTERSON,
Of Counsel.

STATE OF MARYLAND,
Office of the Public Service Commission, ss:

I have compared the preceding copy with the original answer of the Pennsylvania Railroad Company in Case No. 865 on file in this office, and I do hereby certify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and the Seal of Office of the Public Service Commission, at the City of Baltimore, this 28th day of December, one thousand nine hundred and fourteen.

[SEAL.] B. T. FENDALL, *Secretary.*

20 PLAINTIFF'S EXHIBIT No. 7.

(Filed 31st December, 1914.)

Order No. 2133.

Before the Public Service Commission of Maryland.

Case No. 865.

In the Matter of the Complaint of

RUXTON IMPROVEMENT ASSOCIATION and LUTHERVILLE IMPROVEMENT ASSOCIATION

vs.

THE PENNSYLVANIA RAILROAD COMPANY.

The case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been 21 had by the commission, and it being the judgment and finding of the Commission that the withdrawal of certain forms

of tickets sold at rates and under conditions as prescribed by and contained in tariffs filed with this Commission and effective prior to December 15th, 1914, for transportation of persons entirely within the State of Maryland, over the line of railway known as the Northern Central Railway (including branches, so far as same are located within the State of Maryland) leased and operated by said defendant, and the increase in rates on other forms of tickets as proposed by and contained in tariffs filed with this Commission to become effective December 15th, 1914, for transportation of persons entirely within the State of Maryland, over the line of railway known as the Northern Central Railway (including branches, so far as same are located within the State of Maryland) leased and operated by said defendant, are unjust and unreasonable.

It is therefore this 21st day of December, in the year one thousand nine hundred and fourteen, by the Public Service Commission of Maryland,

Ordered, That the defendant, said the Pennsylvania Railroad Company, be and it is hereby notified and required to sell tickets for the transportation of persons entirely within the State of Maryland, over the line of railway known as the Northern Central Railway (including branches, so far as same are located within the State of Maryland) leased and operated by said defendant, as follows:

(a) 100 trip commutation tickets in the form of the 100 trip annual commutation ticket sold and honored by the respondent, prior to December 15th, 1914, and under like regulations and restrictions, save in that the same shall be good for a period of four months after the date of issue instead of for one year from date of issue as heretofore, the rate of charge therefor not to exceed one dollar per ticket over the rate of charge heretofore made for said 100 trip annual ticket.

(b) 10 strip ticket in the form and subject to the regulations and restrictions as to said ticket contained in the respondent's 22 tariff filed with this Commission (P. S. C. Md., No. 259) effective prior to December 15th, 1914, save in that said ticket is to be good for a period of three months after date of issue, instead of one year from date of issue as heretofore, and is to be sold at a rate or charge not to exceed two cents per mile.

(c) 60 trip individual monthly commutation ticket in the form and subject to the regulations and restrictions as to such ticket contained in the respondent's tariff, P. S. C. Md., No. 259, aforesaid, save in that said ticket is to be good for a period of one month after the date of issue instead of within the calendar month for which purchased, as heretofore provided, and is to be sold at a rate or charge not exceeding twenty-five cents in excess of the rate or charge therefor under the tariff aforesaid, in effect prior to December 15th, 1914.

(d) 46 trip individual monthly school ticket in the form and subject to the regulations and restrictions as to such ticket contained in the respondent's tariff, P. S. C. Md., No. 259, aforesaid, save in that said ticket is to be good for a period of one month after the date of issue, instead of within the calendar month for which purchased, as

heretofore provided, and it is to be sold at a rate of charge not exceeding forty-six sixtieths (46/60) of the charge hereby prescribed for the sixty trip individual commutation ticket referred to in paragraph (e) hereof.

(e) 180 trip quarterly commutation ticket in the form and subject to the regulations and restrictions as to such ticket contained in the respondent's tariff, P. S. C. No. 259, aforesaid, save in that said ticket is to be good for a period of three months after the date of issue, instead of during the three successive calendar months as heretofore provided, and is to be sold at a rate or charge not exceeding seventy-five cents in excess of the rate or charge therefor under the tariff aforesaid, in effect prior to December 15th, 1914.

23 (f) Round-trip tickets in the form and subject to the regulations and restrictions as to such tickets prescribed by the tariffs of the respondent filed with this Commission and effective prior to December 15th, 1914, save in that the rate or charge therefor may equal but shall not exceed two and one-quarter cents per mile.

ALBERT G. TOWERS,
E. CLAY TIMANUS,
W. LAIRD HENRY,
Commissioners.

STATE OF MARYLAND,

Office of the Public Service Commission, ss:

I have compared the preceding copy with the original Order No. 2133 in the matter of the complaint of Ruxton Improvement Association and Lutherville Improvement Association vs. the Pennsylvania Railroad Company (Case No. 865) on file in this office, and I do hereby certify the same to be a correct transcript therefrom, and of the whole thereof.

Witness my hand and the Seal of Office of the Public Service Commission, at the City of Baltimore, this 28th day of December, one thousand nine hundred and fourteen.

[SEAL.]

B. T. FENDALL, *Secretary.*

24

PLAINTIFF'S EXHIBIT No. 8.

(Filed 31st December, 1914.)

Order No. 2137.

Before the Public Service Commission of Maryland.

Case No. 865.

In the Matter of the Complaint of

THE RUXTON IMPROVEMENT ASSOCIATION and THE LUTHERVILLE
IMPROVEMENT ASSOCIATION
vs.

THE PENNSYLVANIA RAILROAD COMPANY.

Whereas the attention of the Commission has been called to the fact that its order of December 21, 1914, in the above entitled matter, specified no time at which said order should take effect and designated no period during which said order should continue in force unless earlier modified or abrogated by the Commission, now therefore, it is this 23rd day of December, in the year 1914, by the Public Service Commission of Maryland,

25 Ordered, that the Pennsylvania Railroad Company be, and it is hereby required to file new tariff schedules in conformity with the provisions of the order of the said Commission of December 21, 1914, on or before the 4th day of January, in the year 1915, and it is

Further ordered, by the Public Service Commission of Maryland, that its said order of December 21, 1914, shall continue in force for a period of ten years, unless earlier modified or abrogated by the said Commission.

ALBERT G. TOWERS,
E. CLAY TIMANUS,
W. LAIRD HENRY,
Commissioners.

STATE OF MARYLAND,

Office of the Public Service Commission, ss:

I have compared the preceding copy with the original Order No. 2137 in the matter of the complaint of Ruxton Improvement Association and Lutherville Improvement Association vs. the Pennsylvania Railroad Company (Case No. 865), on file in this office and I do hereby certify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and the Seal of Office of the Public Service Commission at the City of Baltimore, this 28th day of December, one thousand nine hundred and fourteen.

[SEAL.]

B. T. FENDALL, *Secretary.*

26 PLAINTIFF'S EXHIBIT No. 10.

(Filed 31st December, 1914.)

The Public Service Commission of the Commonwealth of Pennsylvania.

Complaint Docket No. 315.

Finding, Determination, and Order of the Commission In re Increase in Passenger Fares and Changes in Passenger Tariffs to Become Effective December 15th and 20th, 1914.

1. The Commission having considered the complaints against the tariffs of passenger fares filed by certain railroad companies in Pennsylvania to become effective December 15th, 1914, or thereafter, whereby fares of various classes are to be advanced and the sale of certain classes of tickets is to be discontinued, and, having held hearings to ascertain the nature of the proposed changes and the effect which the proposed tariffs will have upon the charges collected for passenger transportation and also for the purpose of taking testimony as to the reasonableness and lawfulness of such charges, under the provisions of the Public Service Commission law, it is the judgment and finding of the Commission that the withdrawal from sale of the fifty and one hundred trip individual commutation tickets, which have been maintained for many years, would unreasonably increase the fares paid by persons who have found those tickets suited to their needs; that two and one-quarter cents per mile is an unreasonably high basis for the charge for a ten trip ticket, and that the sixty trip monthly commutation ticket and the forty-six trip monthly school ticket should be valid for a period of one month, and the one hundred and eighty trip commutation ticket should be valid for a period of three months, all from date of issue, instead of being valid for periods of one and three calendar months only, as heretofore and proposed.

27 2. It is held that the proposed tariffs are unreasonable in the following particulars:

1. In the withdrawal from sale by the respondent companies of the one hundred trip individual commutation ticket.

2. In the charge of more than two cents a mile for ten trip tickets.

3. In providing that the sixty trip monthly commutation and the forty-six trip monthly school tickets shall be valid only for the period of the calendar month in which such tickets are sold, and that the one hundred and eighty trip quarterly tickets shall be valid only for three calendar months.

3. It is the opinion of the Commission that a reasonable scale and classification of the charges for suburban passenger transportation in Pennsylvania is one providing for the sale of:

1. One hundred trip individual tickets, sold at a rate not to exceed one and one-half cents per mile.

2. Ten trip tickets, good for bearer and persons accompanying bearer, sold at a rate not to exceed two cents per mile.

3. Sixty trip individual monthly commutation and forty-six trip individual monthly school, and one hundred and eighty trip quarterly individual commutation tickets at the scale of charges in the proposed tariffs.

4. And now, to wit, December 12th, 1914, the carriers are accordingly hereby required to substitute for the passenger tariffs filed, to become effective December 15th (for the Baltimore and Ohio Railroad Company, effective December 20th) other tariffs or supplements, covering the subjects and localities affected by the said proposed tariffs or supplements, providing:

1. For the sale of one hundred trip individual commutation tickets valid for a period of six months from the date of issue, the rate charged for three tickets not to exceed one and one-half cents a mile.

28 2. For the sale of ten trip tickets, good for bearer and persons accompanying the bearer, valid for a period of three months from date of issue, the rate charged for these tickets not to exceed two cents a mile.

3. For the sale of sixty-trip individual commutation tickets and forty-six trip school individual commutation tickets, each class of tickets valid for a period of one month from the date of issue, and for the sale of one hundred and eighty trip individual commutation tickets, valid for a period of three months from date of issue.

To fulfill the requirements of this finding, determination and order, the respondent companies, to wit: the Pennsylvania Railroad Company, the Philadelphia, Baltimore and Washington Railroad Company, the Philadelphia and Reading Railway Company and the Baltimore and Ohio Railroad Company, are hereby authorized to file, post and publish, effective December 15th, 1914, (for the Baltimore and Ohio Railroad Company, effective December 20th, 1914) upon one day's notice to the public and the Commission, new tariffs or supplements to the tariffs, now on file with the Commission.

By THE PUBLIC SERVICE COMMISSION OF
THE COMMONWEALTH OF PENNSYLVANIA.

Attest:

A. B. MILLER, *Secretary.* [SEAL.]

December 12, 1914.

29

Motion for Preliminary Injunction.

(Filed 31st December, 1914.)

In the Circuit Court No. 2 of Baltimore City.

THE PENNSYLVANIA RAILROAD COMPANY, Lessee of The Northern Central Railway Company,

vs.

ALBERT G. TOWERS, E. CLAY TIMANUS, and W. LAIRD HENRY,
Constituting the Public Service Commission of Maryland.

To the Honorable the Judge of said Court:

The plaintiff moves for a preliminary injunction herein as prayed in the Bill of Complaint.

JNO. J. DONALDSON,
CHARLES H. CARTER,
SHIRLEY CARTER,
For Plaintiff.

Ordered this 31st day of December, 1914, by the Circuit Court No. 2 of Baltimore City, on the foregoing motion, that the same be and the same hereby is set for hearing on the 4th day of January, 1915; provided that a copy of said motion and of this order and the Bill of Complaint be served on the defendants or their solicitor on or before the 2nd day of January, 1915.

JAMES M. AMBLER.

Service of Copy of Motion and Order above and of Bill of Complaint admitted this 31st day of December, 1914.

W. CABELL BRUCE,
Gen'l Counsel for Defendants.

30

PLAINTIFF'S EXHIBIT TESTIMONY.

(Under Paragraph 13 of Bill.)

(Filed 7th January, 1915.)

Before the Public Service Commission of Maryland.

Case No. 865.

RUXTON IMPROVEMENT ASSOCIATION and the LUTHERVILLE IMPROVEMENT ASSOCIATION
vs.
THE PENNSYLVANIA RAILROAD COMPANY.

THURSDAY, December 17th, 1914—at Ten O'clock a. m.

Present:

Albert G. Towers (Chairman), E. Clay Timanus, W. Laird Henry, Commissioners.

William Pinkney Whyte, Jr., Esq., Washington Bowie, Esq., R. Bennett Darnell, Esq., Representing the Complainants.

Shirley Carter, Esq., J. J. Donaldson, Esq., Henry Wolfe Bikle, Esq., Representing the Respondent.

(The Chairman:) We are ready to hear you gentlemen.

(Mr. Bowie:) Does your Honor wish the reading of the petition or not?

(The Chairman:) Yes, sir; we do.

(NOTE.)—Said petition here read.

31 (The Chairman:) Will you read the answer, Mr. Carter?

(NOTE.)—Said answer here read.

(Mr. Bowie:) If your Honor please, we assume the burden of proof will be on the Railroad Company in view of the fact that they are attempting to raise the present rates. I believe that was the rule followed by the Pennsylvania Commission, to prove the increases proposed reasonable and fair.

(Mr. Donaldson:) We beg leave to refer to the Company's charter, which leaves absolute discretion to the president and board of directors to fix the passenger and freight rates within a given amount—that amount as far as passenger fares are concerned is four cents per mile per passenger. As we all know the rates are very much below that, but as long as that discretion has been recognized this Commission has the power to refuse and regulate rates, but the burden will be on anybody showing that discretion has not been recognized. We think the burden rests with them.

(Mr. Carter:) If your Honors please, I would like to present Mr. Bikle.

(Mr. Bikle:) Answering the inquiry of my friends on the other side, in Pennsylvania there is a provision of the statute which specifically compels the railroad, when they increase their rates, to show the burden of proof. In the absence of such a provision in the Maryland law the burden, of course, is on the complainant, as decided by the Supreme Court of the United States and interpreted by the Interstate Commerce Commission Act before it was amended. There is no such provision in the Maryland Statute, so that leaves the law as it would be—as it was under the Interstate Commerce Commission Act before the elimination of that provision. That case I refer to in the Supreme Court of the United States—I don't remember the name—but it is in 209 U. S.

(Mr. Whyte:) I say that this question is entirely within the discretion of the Commission, law or no law. This is a corporation that has charged—has all its books to which we have no access—they have full information and they are in a position to go ahead and show your Honors whether they have a low revenue now and need an increase or whether they haven't. For a lot of commuters 32 to come in from the road and attempt to show that in such an off-hand way, would be beyond our control; we couldn't do it at all. So I say, it is a question only within the discretion of this board.

(The Chairman:) Gentlemen, we will hear the complaints first.

(Mr. Bowie:) I would like to ask that a copy of the tariff be filed.

(NOTE.)—Said tariff here produced by Mr. Harper, the rate clerk.

(Mr. Bowie:) The Commission yesterday ordered the Railroad Company to give certain information. Is the counsel ready to furnish that?

(Mr. Bikle:) This order was served on Mr. Latrobe at 4.50 yesterday afternoon and it was absolutely impossible for us to specifically comply with the request herein contained. But, for the purposes of our own case, we have information of our own and we are prepared to give that, but we could not comply specifically with this subpoena on this short notice. The complaint I think was filed two or three weeks ago and this subpoena was not served until yesterday. In fact, I understand it was not ordered until yesterday.

(Mr. Bowie:) I wish to call one of your own rate men. I would call Mr. Latrobe as the general agent, but as we excused him, I will put on the stand one of your own witnesses whoever you prefer.

Mr. RICHARD J. DE LONG, a witness of lawful age, produced on behalf of the complainants, having been duly sworn according to law, testified as follows:

Direct examination.

(By Mr. Bowie:)

Q. Mr. De Long, is this a copy of the present tariff in effect prior to December 15th, 1914, along the line of the Northern Central Railway?

A. I think it is. I want to be dead sure. Yes, that's correct.

33 Q. Mr. De Long, will you refer to your present tariff, which I will call the old tariff, the one now in effect, and tell us what the rate on the 100-ride ticket is between Mt. Washington and Baltimore?

A. May I refer to a statement I prepared on that?

Q. Yes, certainly.

A. Mt. Washington. What particular ticket do you refer to?

Q. The 100-ride?

A. \$9.00 is the old rate.

Q. That is a distance of—

A. Six miles.

Q. Now, the next station up the line we will take is Lake; what is the rate to that?

A. \$10.20.

Q. Ruxton?

A. \$10.50.

Q. Riderwood?

A. \$10.80.

Q. Lutherville?

A. \$11.70.

Q. Cockeysville?

A. \$14.40.

Q. Parkton.

A. \$22.50.

Q. Freeland?

A. \$26.10.

Q. Will you tell this Commission on what basis that charge is made to Mt. Washington, of \$9.00?

A. It is probably the old 60-trip monthly fare.

34 Q. Now, Lake is how much further up the road than Mt. Washington?

A. 1.8 miles.

Q. And the increase is \$1.20, is it not?

A. Yes, sir.

Q. Is the regular ratio of increase as the distance increases along the road?

A. Yes. In each of these cases I think with the exception of Woodlawn, the 100-trip fare is double the monthly fare. As the monthly fare falls so does the fare fall for the 100-trip annual ticket.

Q. Now, the ratio of increase between Mt. Washington and Lake is \$1.20; how is that arrived at?

A. I will have to explain how the 60-trip monthly fare is made, which is the basis. The 60-trip monthly fare—the basic fare is for three miles, \$3.60—for each additional mile thirty cents; that makes the rate to Mt. Washington, which is three miles more than three, 90 cents, plus \$3.60, or \$4.50. Now, the distance from Mt. Washington compared to Lake is 1.8 miles further, which is called two miles or 60 cents more; 30 cents for each mile or fraction—or fraction of each mile, for a half a mile we add 15 cents; this is 1.8

miles, and it is called two miles and that would be 60 cents more for the monthly book, or \$5.10.

Q. That same ratio continues up to and including Riderwood?

A. Approximately.

Q. Let's take Riderwood—

A. There may be cases here where the old system was used in which .1 or .2 of a mile were dropped. Under the present system it is counted as one-half a mile. The old system it was sometimes dropped. These fares may be based on the old system, and I will tell you in a moment. Riderwood is 3.2 miles further. That .2 of a mile is dropped and three miles at thirty cents would be ninety cents added to \$4.50 to Lake, would make \$5.40. Under the present schedule that would figure out \$5.85.

35 Q. Now, when you get to Lutherville, you jump from that monthly ticket from \$5.40 to \$5.85?

A. Yes. That is five and one-half miles further than Lake. Five and a half miles at 30 cents would be \$1.65, and the rate to Mt. Washington is \$4.50. That is six miles. Lutherville is ten miles further down—four and a half miles—now, four and a half miles at 30 cents under the present schedule would be \$1.35, and that added to \$4.50 makes \$5.85, which is the rate to Lutherville.

Q. Now, the fare to Riderwood is \$5.40; that's 9.2 miles?

A. Yes, counted as nine miles under the old schedule.

Q. Lutherville is ten and a half miles?

A. That's counted as ten and a half miles.

Q. Therefore you add 45 cents?

A. Yes, sir.

Q. And the same ratio of increase prevails to Cockeysville, does it?

A. I think so. Cockeysville would be counted as fifteen miles; that would add \$1.50. Is that correct? No, I can't tell you that. You understand these old fares are not always strictly in accordance with the present schedule. We have never made these slight adjustments to make them conform with the present scale. Let me figure this out; the full fare—we will take Mt. Washington as the basis—that's six miles, and that is \$4.50; now, to Cockeysville is nine miles further; nine miles at thirty is \$2.70 added to the \$4.50, makes \$7.20. That figures out all right.

Q. The same ratio obtains to Parkton and Freeland?

A. Yes, sir. There may be an addition of fifteen cents owing to the dropping of that .2 of a mile.

Q. How long have these present rates been in effect?

36 A. For quite a number of years. I can't give you the exact time, but I think somewhere since 1886, for 60-trip monthly tickets.

Q. And the 100-ride ticket has been used for how long?

A. Eighteen years.

Q. This system of adopting \$3.60 as the basis charged and thirty cents per mile was arrived at how?

A. The distance of three miles at two cents a mile would make

six cents a trip, which was considered the minimum commuters' fare.

Q. And the thirty cents?

A. A half a cent for each additional mile.

Q. Have been in effect for nearly thirty *cents*? Has the experience of the railroad company been that the points *proportionate* the proper amount of revenue? That is to say, the points up the road contribute their proportion to these fares to the city?

A. Your question as to the scale we use—

Q. As to your experience based upon that scale?

A. Our experience is this: that in order to explain the scale, why we use the basic rate of \$3.60 for three miles; I will have to explain to you what we understand by commutation—

Q. Very glad to hear it?

A. A commuter in the strict sense of the term is one who travels daily—at least, weekdays—between his home and his place of business or occupation, for residential purposes. Commutation thus restricted, as it should be, means that a commuter travels between two fixed points, a round trip per day—at least weekdays—generally at the same hour of the morning going to Baltimore, and about the same hour in the afternoon returning from Baltimore; the flow of this traffic is steady from day to day, and the company's

37 schedule is arrived at and trains are operated on that basis.

The suburban trains running between Baltimore and Parkton, which form the largest portion of the train service, and from Baltimore to Green Spring Junction, form a unit; in other words, the run from Baltimore to Parkton is a unit and Baltimore to Green Spring Junction is a unit, and based on that unit we so desire to fix our commutation fares as to provide the six-cent minimum for the shorter distance, and in fixing this the mileage is only considered as three miles at two cents per mile. In our experience in starting a train from Baltimore for Parkton, the larger proportion of the passengers leave the train before you get halfway to Parkton, or about halfway, and the result is the potential capacity of the train—that is, the number of seats multiplied by the distance from Baltimore to Parkton, is used to a very low percentage. The ideal commutation train would be a trainload of commuters, every seat occupied, starting from Baltimore and running through to Parkton without stops. We aim to secure such an ideal, although we never expect to reach it, but if we were to fix commutation station to distance run it would result in the section near Baltimore being very overcrowded as compared with the sections further away, and would result in a much lower rate per commuter per trip—a much lower revenue, not rate—a much lower revenue per commuter per trip. The fixing of the commutation fare is not per trip or per mile, but per month, and provision is made for a commuter every weekday in the month and in a great many cases on Sundays, and our fares are based on that foundation. I suppose you can readily see that the actual cost per commuter per trip in furnishing train service is very nearly as high for a commuter who uses the train five miles as one who uses it through to Parkton, and that cost furnishes the justification of

the basis used. Commutation fares are entirely different from all other fares. The one-way fare and especially per mile, are usually prescribed by the law not to exceed a certain rate per mile, and all fares which are a slight reduction from these one-way fares are so much per mile, such as mileage books, excursion tickets which we sell, and even our 10-strip tickets in this Baltimore division territory are based on so much per mile. But when you come to commutation proper, that basis is not followed except to a limited extent of having fixed a basis for three miles; you then add per mile at one-half cent a mile. That is the basis used by all railroad companies, with slight modification. I have made a thorough study of commutation fare out of Philadelphia, New York, Baltimore and Chicago, and I have found this to be the basis in a general way used by all railroad companies for daily commutation trips, sold per month.

Q. In other words, the railroad can well afford to carry a passenger the additional mileage—to a more distant point rather than any of the others?

A. That is right, and we think it is really for the interest of all concerned to fill up the train to the highest percentage of the potential capacity. It is not that alone, but it is based on the service, too, you know.

Q. Now, you said the ideal commuter is one who rides every weekday; that would give an average of fifty-two to fifty-three trips a month?

A. May I first correct that? I did not use the expression ideal commuter, but real commuter. There is a difference between the two; realities are not always idealisms; the ideal commuter is one who pays a compensating fare, but that is not always a real commuter.

Q. Do you not consider the school children that come to town five days a week commuters?

A. I do, and I will explain. When commutation fares were first established, they were restricted to weekday travel and provided for fifty-four trips. The highest number of school weekdays in any one month is 27; the highest number of school days in any one month is twenty-three, so originally the commutation ticket for the daily commuter was fifty-four trips and for the school children forty-six trips. The nature of the trips was the basis. It must be a trip for residential purposes, and many years ago before the first Interstate Commerce Commission law was passed I knew of railroads in the Pennsylvania Railroad system that sold a certain class of commutation tickets only to the man who owned a residence or rented a residence. That, of course, had to be discontinued, but that idea is still prevalent in the school ticket. The school ticket is only sold to children going to school, to acquire a general English education. The nature of the travel is still the main basis of that fare. We do not sell it to anyone attending a musical concert, for example, and a business college, but only a regular English course, and we claim as far as we can under the law that we should restrict the use of the commutation fare aver-

aging less than one cent a mile to the individual commuter who travels daily, at least weekdays, between his home and place of business for residential purposes.

Q. Do you not consider the carpenter who lives at Lutherville and works in Baltimore City on the average of five days a week entitled to commutation?

A. He is entitled to our monthly fare.

Q. Then he pays a much higher rate than the daily man pays?

A. He pays the same amount for the same number of trips.

Q. But if he only by the nature of his business can only make five round trips a week, the cost to him of each trip is actually considerably increased over the daily commuter, is it not?

A. The cost to him for commutation is the same. Now, the division by the number of trips is a matter for him, not for us. We do not sell commutation so much per trip; we sell it so much for the month, and the man has the privilege of taking his sixty trips a month. We might liken it to the boarding house which gives you a rate per month; if you happen to be away a day for a meal you do not get reimbursed; the meal is there, the bed is there. So, in the service; we provide train service for the commuter, and it's there every day in the week, and it is based on the premise that he wishes to afford himself of the service every day. It's only on that basis that you can establish and justify commutation fares.

Q. Do you not consider that the carpenter or the school child is entitled to be sold commutation to fit their needs rather than to make them pay on the arbitrary condition you have established of daily rates, including Sunday?

A. When you say commutation, do you mean commutation fare on an average less than one cent a mile for a 60-trip ticket?

Q. I do?

40 A. No, sir, I do not, because if you fix such a fare at five trips a week, the next thing it will be three trips a week, and the next, two, and the next, one.

Q. Please don't argue your case?

A. You are asking me why I don't consider that commutation.

Q. Will you tell me your division line between commutation rates and occasional passenger, or have you any intermediate between the commutation rate and the occasional passenger?

A. There should be no application of a commutation fare per trip averaging less than one cent a mile to anyone but a daily commuter. That is the only answer I can give you. By commutation fares in the strict sense of the term, you mean those fares that average one cent a mile or less?

Q. I mean by commutation a service rendered to suburban travellers who live permanently in the suburbs and come in to the city for their business. Now, do you consider the wife of a commuter who comes to Baltimore City three times a week for marketing entitled to any privileges?

A. I do not. She doesn't travel for residential purposes; she travels for business.

Q. Why, if they are not entitled to any privileges, was the 100-ride ticket ever published?

A. That is a pretty hard question to answer. I can tell you why it was established at Philadelphia, where it had its starting point—

Q. I want Baltimore?

A. I can't tell you that except from hearsay. The records of the Northern Central Railway at that time, so far as the local passenger business was concerned, was kept in Baltimore, and I am unable to ascertain what became of them. But I can give you my best recollection on the subject. So far as that goes, I am willing to swear to it.

This ticket—I will take it by steps—this ticket was first introduced between Philadelphia and points on what we call the

41 Chestnut Hill Branch, through the mistaken idea that we could meet trolley competition which then first became keen, by providing a ticket for 100 trips good three months in a year. When this ticket was established it proved a very fine ticket for people who made 100 trips within three months. Some of their commutation trips were made on the trolley. We thought we could hold a lot of our commuters by furnishing this ticket. When it was introduced there, other radii running out from Philadelphia from the suburbs to town who didn't have trolley competition, insisted on having the same ticket, and they got it, and the time limit was extended to one year, and I understand that this suburban section from Baltimore out on the Baltimore division, which is akin to that we have out of Philadelphia, wanted that ticket, and they got it.

Q. There was no trolley competition to produce that at that time?

A. I don't know whether there was, but my understanding was that it was done here to please these people, when we did it at Philadelphia. It didn't take us long to realize that around Philadelphia we had made a very great mistake from a revenue standpoint.

Q. It has taken how many years to realize it around Baltimore?

A. About the same time?

Q. Eighteen years?

A. No, not eighteen years. We realized this very forcibly six or eight years ago, and then had taken steps to discontinue the ticket, but other circumstances intervened and it had to be abandoned. I can give you the reason why if you would like to know it.

Q. We are not interested in the reasons at this time.

(The Chairman:) Judge Henry would like to hear it.

(The Witness:) We have a branch of the system called the West Jersey and Seashore Railroad, which runs from Camden 42 to Cape May and Atlantic City, and has considerable suburban

traffic and commutation travel to the nearby points, and a similar proposition made as to the more distant points, to Hammonton's and Bridgeville, etc. I was Division Ticket Agent of the West Jersey and Seashore Railroad from 1903 to 1910. In 1906—I think that was the year—the 100-trip ticket was sold out of Philadelphia from every radii—we had ten of them—except the two radii of the West Jersey and Seashore Railroad. A complaint was made against us to the Interstate Commerce Commission, and after

thoroughly considering the subject, we placed that ticket on sale to the West Jersey and Seashore Railroad. It was my business then monthly to watch and analyze the ticket sales from each station—we received a report from each agent showing sales of the various classes of tickets—the amount of money collected therefor and the total compared with the same month of the preceding year, with a provision to know the cause of the increase or decrease. Shortly after the 100-trip ticket was placed on sale the agent in such towns as Salem, Bridgeville, Woodsboro, Swedboro, Vineland, reported decreased total ticket sales, and when I inquired into the matter I found it was due to the fact that, although the same number of passengers approximately had been ticketed, a large proportion that formerly made one or two trips a week to Philadelphia, and had been buying excess tickets, were now buying the 100-trip tickets, and not making any more trips, and this resulted in a very great decrease of the revenue. Instead of being used by daily commuters, as we had originally expected when it was put on sale eighteen or nineteen years ago, we found, and our observation confirmed, that this ticket, especially to points beyond a 10-mile radius, was used very extensively by other than bona fide commutation travel. We also found that commuters who had been buying 60 trip monthly tickets every month were now buying the 100-trip ticket, and they bought them about every three months. The 100-trip ticket was sold at twice the monthly rate, and during this shuffle we lost one month's fare out of every three months, we will say. The total result was very surprising to us, and so far as I was concerned particularly, from that day to this I was opposed *in the use of the 100-trip annual ticket of commutation fares, averaging one cent a mile—approximately one cent a mile.* It had proven in our experience a revenue depleter—a net revenue depleter—and not a net revenue producer, and we are operating a railroad for net revenue, not primarily, but that is the secondary asset.

43 Q. Now, Mr. DeLong, you told in response to the Commission's request, the history of something in which we are not at present concerned. Will you tell what has been the experience of the railroad on 100-trip tickets from Baltimore to Parkton and intermediate stations?

A. About the same as the record of sales will show.

Q. Will you produce that record?

A. I have such record; yes, sir.

Q. Now take the sales of the monthly ticket prior to the establishment of the 100-trip ticket?

A. I haven't got those. The only sales I have here are between Baltimore and suburban stations for one year, beginning with November, 1913, and ending with October, 1914, showing the sales between Baltimore and each station from Baltimore to Freeland, inclusive, and Green Spring Junction, inclusive, by classes of tickets.

Q. Now, have you any statistics in your possession that you can produce to show your experience on the sales of the monthly ticket prior to the establishment of the 100-trip ticket on the Northern Central?

A. I have not. That is eighteen years ago.

Q. Then you wouldn't testify that your experience in Baltimore and Parkton is at all analogous to that in Philadelphia?

A. I can prove that by analyzing these figures.

Q. Will you please do so?

A. Yes, sir.

(Mr. Bikle:) If the Commission please, I think in order that the Commission might thoroughly understand, that we might introduce this statement at this time, and then it might be explained in connection with Mr. DeLong's statement to the other side, and he might more readily cross-examine on it. This is the ticket sale 44 for last year; this is a summary of them, Mr. DeLong. I don't want to offer this out of order unless the other side—

(Mr. Bowie:) Not at all. We are very glad to have it.

(NOTE.)—Said paper just above referred to is here filed in evidence and marked "Company's Exhibit No. 1."

(Mr. Bikle:) This is a summary of the ticket sales.

(NOTE.)—Said paper just above referred to is here filed in evidence and marked "Company's Exhibit No. 2."

(The Witness:) That large statement (indicating) is for the purpose of showing what revenue we are expected to gain by the change. On this small statement it shows the ticket sales and the purposes of the various tickets, and I want to call attention to the fact that out of 328,832 commutation trips per annum, 212,600 were carried on 100-trip ticket, while 88,560 were carried on monthly tickets and 14,812 on school tickets. There are, therefore, only real commuters—daily commuters—to produce 88,560 trips a year. You will notice that the 100-trip ticket is used by 30.59 per cent of the total number of passengers, while it produces only 20.89 per cent of the total revenue.

(Mr. Bikle:) That is, of the total revenue from the commutation travel.

(The Witness:) No, sir; of all.

Q. How do you arrive at that figure, that it produces this disproportionate amount of revenue?

A. I can only refer you to the statement showing that what we term a real commuter—a daily commuter—who uses a 60-trip ticket—only 88,560 commutation were made in one year between Baltimore and all stations up to Parkton—up to Freeland and Green Spring Junction inclusive, while 212,600 were made on 100-trip tickets. You will also notice that the total number of passengers on one-way, excursion, and trip tickets was 366,267, which is not twice as much as the number of passengers traveling on the 100-trip ticket.

45 Q. You are, of course, unable to testify how many daily commuters use the 100-trip ticket?

A. I can not, but I can not understand if they make daily trips—fifty-four trips in a month—running from fifty-four to fifty-eight trips a month, what object they have in buying 100-trip tickets

which only gives them fifty trips a month. I am speaking now of only week trips. Why should a man pay for 100-trip tickets the same amount he can get 120 trips for.

Q. Assuming the number of his trips may not coincide with the number of days, although his—

A. Then he doesn't gain anything by it.

Q. But he does not lose?

A. I might say that we made a test since these fares were changed—we made a test to show the average life of a 100-trip ticket.

Q. On the Northern Central?

A. On all points—four and a half months.

Q. What is it on the Northern Central?

A. I can't tell you that.

Q. You have made average tests from time to time on the Northern Central?

A. We take all sections—there are not many sections; only outside Philadelphia and Baltimore.

Q. What is the result of Baltimore?

A. I can't tell you of Baltimore.

Q. Isn't it a matter of record?

A. I think not; I think they were all taken and all averaged up.

46 Q. Certainly, Mr. De Long—I have seen your tests made frequently, when the break-man accompanies the conductor; he turns them into the Baltimore office?

A. That's not the one I mean. Wait a minute—I have a statement here (indicating). Here it is (indicating). This test was made beginning November 17th and ending November 30th.

Q. Where?

A. In the auditor's office in Philadelphia and included all 100-trip annual tickets.

Q. We want the test on the Northern Central Railway?

A. I can't give you that.

Q. Won't you produce that?

A. Not at this time. We would have to make another test of it.

Q. You have these records sent from Baltimore to Philadelphia?

A. Yes, sir.

Q. Can't you produce the records sent from Baltimore to Philadelphia at that time?

A. We haven't them at Philadelphia.

Q. I want to confine this examination as far as I can to the Northern Central, because we are dealing with that line, not the general system of the Pennsylvania Railroad?

A. It would fall very little over four and a half months.

Q. You don't know?

A. I do not.

Q. You are simply making an approximation?

47 A. In railroading, we make approximation.

Q. Conditions in Baltimore and Philadelphia are different?

A. I don't think so. I can tell you in what respect they are alike, if you want to know.

Q. Of course, they are alike in a number of respects, but as to the commuters and the daily receipts. We would like to know—

A. I will give you in what respect they are alike.

Q. No, I am not interested in that. We don't want to accumulate the record with similarities of that kind. You spoke of a rate, referring to the commuter as being one who traveled at one cent a mile or less?

A. Yes.

Q. Is it not a fact that for the 100-trip ticket the commuters at Ruxton pay \$1.05 per mile, and Freeland \$1.17?

A. One moment; I will have to figure that out. They differ as they go up the road. The average is one cent as you will see from this statement. The last column there (indicating) you will see the average rate per mile—there is the 40-trip ticket—

Q. What is the average rate per mile on 100-trip tickets between Baltimore and Parkton?

A. We don't make these rates per mile. Anyone can figure out what it figures, but we don't figure it that way.

(Mr. Darnell:) You testified to it, all the way through; one cent a mile.

(The Witness:) The sales average one cent a mile; not the fares.

Q. Mr. De Long, what do you mean by that?

A. In this statement which is produced here we show that there were 212,600 100-trip ticket sales, representing 212,600 trips, 48 with a revenue of \$28,144.50. That represents in miles, 2,813,570. There is an average per passenger per trip between Baltimore and all points of 13.24 and a mileage per passenger of 13.23 of a mile, or one cent a mile. This is the sales, and that is what counts in railroading in the quotation of fares. It is the revenue produced that is of primary importance.

Q. I believe you testified that your 100-ride ticket was based on the monthly ticket?

A. Yes.

Q. And the monthly ticket you stated was on a basic rate of \$3.60 for three miles and that you added to that basic rate thirty cents for each additional mile?

A. Yes, a half a cent a mile.

Q. That gives nearly an average cost per mile, does it not, to the commuter?

A. The average cost was one cent per mile on a ticket sold in this section.

Q. Now, when you take the 100-ride ticket to Ruxton a man pays more than one cent a mile, does he not?

A. Just as he pays more on a 60-trip monthly ticket.

Q. And when he gets to Parkton he pays two and a quarter cents a mile, does he not?

A. For a 100-mile ticket?

Q. Yes?

A. Oh, he pays less than one cent a mile there. Parkton—the monthly ticket is only two and a half cents and the distance is

28.8 miles. That makes less. The nearest you get to having one cent per mile is Chattolanee—

Q. That's not on the main line?

A. That is 14.2 miles and 14.1 cents; that's about one cent a mile. On this side of that distance it is a little over one cent a mile. Beyond that, less than one cent a mile. On the other hand, you might take Timonium, 11.7 miles, 12.3 cents per trip, or a little over one cent a mile. The next station, Padonia—Texas is practically the same, 13.5 miles, thirteen and a half cents a trip. Every station beyond Texas pays a little less rate, and every station on this side pays a little more, but the average of all the sales is one cent per mile.

Q. What percentage of your passengers originate at Texas on this side?

A. I can't tell that except by calculation. I have the number of tickets sold at each station here (indicating). I can give it to you in another way—for instance, we will take the 100-trip ticket; the average distance per trip is 13.24 miles. Now, you cut out 13.24 miles and you get \$1.00; you understand?

Q. Yes?

A. That would be Eccleston on the branch, and Texas on the main line; these are about the dividing points.

Q. Is it not a fact that seventy per cent of the commuters using the main line of the Northern Central leave trains before they get to Texas?

A. I have no knowledge of that, but I would suppose so.

Q. And therefore they pay one cent a mile or more?

A. A little more—a little over a cent a mile, yes; and those beyond pay a little less.

Q. Now, coming back to your 100-trip experience, who can testify—tell us—the experience of the railroad before they established the 100-trip ticket as compared with immediately afterwards?

A. From a revenue standpoint?

Q. From a sales standpoint; yes, sir?

A. I don't think those records are obtainable. That was eighteen or nineteen years ago.

50 Q. Then there is no one, according to your knowledge, who is able to testify as to the experience of the 100-trip ticket as compared with the monthly ticket?

A. I can.

Q. On what experience do you base that testimony? You just told us you had no figures on the sale of monthly tickets?

A. You didn't limit that to the time before they were introduced.

Q. Your testimony, as I understand it, Mr. De Long, was that after you established the 100-trip ticket at some points in New Jersey you found your sales on monthly tickets fell off very materially?

A. I didn't say that, and the same—

Q. And the inference seemed logical that you thought that was the fact here. Now, I would like to know if there is anyone who can specify as to the experience here?

A. I can only do it by analogy and this statement (indicating).

We found that the same cause produced the same effects in Philadelphia as they did in Baltimore.

Q. The revenue produced from the 100-trip ticket at present on the Northern Central for the twelve months ending October, 1914, as I see it, was about \$28,144.00, as compared with \$9,362.00 for the 60-trip ticket?

A. Yes.

Q. Indicative of the fact that the 100-trip ticket is the most profitable ticket?

A. By the purchaser?

Q. Yes?

A. Not on our side. They look at it from a fair standpoint; we look at it from a revenue standpoint.

51 Q. What proportion of your tickets are used—the punch or the monthly ticket?

A. I can't tell you that. I don't know of any tests being made. We made a test of the 100-trip ticket. The only way you can make a test of that kind is to take the tickets that are turned in at the end of the month and make the comparison. Now, we don't get all the tickets. The passenger will probably ride until the last day of the month, and he will retain his ticket, probably thinking that he might have use for it, and then not have use for it on the last day of the month, and of course, he retains it. Now, taking these tickets that have been turned in and those that have been completely used on the 100-trip ticket for all sections, we get that four and a half months. Now, the 60-trip tickets, even if we made such a test, it would not be representative—an approximate number of tickets—because the 60-trip ticket to a smaller extent is used to completion.

Q. About what percentage of the 60-trip ticket is used to completion?

A. I can't tell.

Q. Haven't you the records on that?

A. No, sir. We haven't made any test. We didn't expect to be cross-examined on the 60-trip ticket, or I would have tried to obtain such figures, but I might say here that that is, in our opinion, entirely immaterial as to the number of trips taken.

Q. We might differ on that. I am referring to your large statement here (indicating), taking the station at Ruxton—

A. Yes.

Q. You sold 155 monthly tickets; that compared to 300 100-trip tickets, did you not?

A. Yes, sir.

52 Q. In other words, practically out of every three persons, two of them bought 100-trip tickets?

A. I can't answer that. For instance, suppose these 155 tickets were bought by commuters who travelled during this entire period. There would then be only thirteen commuters; twelve into one hundred and fifty-five is thirteen.

Q. But the figures would indicate that every three passengers going, that two would go on a 100-ride ticket?

A. Oh, no. I can't figure it that way. Let us figure it this way: 155 monthly tickets at 60 trips represent 9,300 passengers, you see.

Q. Yes?

A. Well, three hundred 100-trip tickets represent 30,000, to the proportion is 9,300 to 30,000, or more than three to one. That is the way to get at it.

Q. You are a little more accurate on my side than I was myself?

A. We are unable to give you the exact figures; we consider that a very undue proportion, though, from our revenue standpoint.

Q. From your revenue standpoint, it is worth more to you to sell a passenger a 100-ride ticket than a monthly ticket?

A. No, sir; it is not.

Q. What do you get for bringing a passenger in from Lutherville on the 100-trip ticket?

A. For all the passengers—

Q. No, for one passenger you get how much?

A. Lutherville, 11.7 cents.

Q. What do you get for bringing in a passenger on a monthly ticket who sits beside him?

53 A. Nine and one-half cents.

Q. Isn't 11.7 cents more revenue than nine and one-half cents?

A. It is, disassociated from the nature of the traffic. You understand, the 60-trip fellow pays us every day, but the 100-trip fellow only when he takes a ride.

Q. How much does the 60-trip passenger pay you based on his average travel?

A. I can't tell you that. We do not figure 60-trip monthly fares on that basis. I would like to give an illustration—

Q. One moment. Assuming a man used 56 trips a month from Lutherville, that costs per trip—

A. Eleven cents a trip.

Q. Eleven cents?

A. Yes, sir; a little bit more.

Q. 11.7, I have it?

A. Oh, no; about 11 $\frac{1}{4}$ cents.

Q. I beg your pardon. I was on the new rate; and the other man pays 11.7 cents, so there is still an advantage to you on that 100-trip ticket as far as that ticket is concerned?

A. It is not, because the 60-trip man does not pay per trip, but per month. It is immaterial whether he takes all the trips or not. It is just exactly as the boarding house where you pay board by the month and you get a lower rate per month or per meal or per day than the transient boarder gets who is there only one day; he is charged so much per meal and so much per day. I only wanted to illustrate the case.

Q. I know, but you have illustrated the boarding house case twice?

A. I am sorry you couldn't see the illustration.

54 Q. That is a matter of argument—

A. I am giving you the facts as to the basis on which we make these fares.

Q. Now, Mr. De Long, coming to the new tariff; you increased your 60-trip ticket how much?

A. Twenty-five cents.

Q. Regardless of distance?

A. Yes. We add the twenty-five cents to the basic fare and make it 3.85 instead of 3.60.

Q. Why doesn't that apply to increase on the 100-trip ticket?

A. We have not established increased fares on the 100-trip ticket.

Q. You have abandoned them?

A. Yes, sir.

Q. Why?

A. Because we consider that ticket a revenue decesser.

Q. Notwithstanding the fact that a man, on the old rate—that a man used a monthly ticket 52 trips a month which you said the average number of trips was—

A. No, you said that.

Q. You said you expected to haul him every week-day and the average week-days gave 52 trips?

A. We will increase that; we run trains on Sunday when you want to go to church and to go out in the country or any place.

Q. The travel is not very large out in the country?

A. I will tell you this: In '86 we had so many requests from 55 commuters in the suburbs who wanted to come to church that we increased it from 54 to 60, and didn't make any corresponding increase in the charge.

Q. In Baltimore?

A. Yes, sir.

Q. Was the request in Baltimore?

A. Oh, yes. It was here too. When we make an offer like that we try to spread it out over as large a territory as possible.

Q. Now, your friends in New York and Philadelphia—or Philadelphia at least are today enjoying 100-ride tickets?

A. Yes; good for six months, at one and a half cents a mile.

Q. Why don't you consider the Baltimore people entitled to your beneficence?

A. That is a matter of consideration. I am not prepared to testify to that. I didn't know this was to be a compromise trial; I thought we were here to justify these fares.

Q. I ask you why it is if you can give people in Philadelphia, where your experience on the 100-ride ticket was so adverse and you are still giving them the benefit of 100-ride tickets, that you can't give it to the commuters in Baltimore?

A. I think the benefit of the 100-ride ticket was given in Philadelphia by the Railroad Commission of Pennsylvania and the Interstate Commerce Commission. It was done by order of the Pennsylvania Commission, which fixes the fares from Philadelphia to points within the State of Pennsylvania. As to fares from Philadelphia to New Jersey, while on the same basis, we could not maintain one kind of ticket on one side of the river and one kind of ticket on the other side, so we took it up with the Interstate Commerce Commission, and filed our tariff on short notice.

Q. Is it not a fact that you filed a tariff with the Interstate Commerce Commission giving the commuters of Pennsylvania 100-ride tickets, four days before the hearing in Philadelphia?

56 A. The tariff filed with the Interstate Commerce Commission did not apply to the intrastate fares.

Q. Did you not?

A. No, sir; we did not.

Q. Did it not contain these fares, as a matter of fact?

A. It did, but you understand that a tariff might contain an interstate—might contain an intrastate fare—which is not affected.

(Mr. Bikle:) Mr. De Long, before you leave that, just state when the tariff was filed in Washington?

(The Witness:) It was filed a little before twelve o'clock on Saturday, December 12th.

(Mr. Bikle:) That was before or after the hearing before the Public Service Commission of Pennsylvania?

(The Witness:) After the hearing of the Pennsylvania Commission.

Q. Didn't the tariff you put in effect in Philadelphia contain the tariff submitted before the Interstate Commerce Commission on December 10th?

A. No, sir; we didn't have any tariff on December 10th.

(Mr. Bikle:) If I might interrupt, the tariff contains the notation that it was issued by special permission of the Interstate Commerce Commission given on December 10th. To make it perfectly clear, there were two hearings in Pennsylvania. After the first hearing, it was realized that the Pennsylvania Commission might order certain reductions. At that time the tariffs were already on file at Washington withdrawing the 100-trip ticket and making some changes that are under consideration here. In view of that possible conflict with the Pennsylvania Commission, the Interstate Commerce Commission was asked whether, if the Pennsylvania Commission ordered reduction to the railroad, if the railroad might not put in

similar reduction to points interstate around Philadelphia 57 on short notice, and the Interstate Commerce Commission said that we might, leaving it still for us to determine whether we would—the permission was to issue tariff on short notice, reducing, if we thought wise—so, when the Pennsylvania Commission acted we were in a position to act at Washington on short notice, deeming it proper under the circumstances to do so. But what the Commission at Washington did was not to approve these fares, but simply give us permission to issue reductions on short notice. That was all. They didn't have the specific tariff at all. It was only that they gave us permission to make reductions at the points already stated. So the tariff bears that statement of approval to issue under their permission.

Q. Did the tariff then on file, on which you asked permission to reduce, contain the 100-ride ticket?

A. On file with the Interstate Commerce Commission?

Q. Yes?

A. It did not. That had been withdrawn.

Q. But the permission you obtained authorized you to issue 100-ride tickets?

A. No, sir. It gave us permission to file on three days' notice any addition the Pennsylvania Commission might order effective in the State of Pennsylvania applying to the same fare and same ticket from the Philadelphia Station to New Jersey or between any other interstate points, such changes to be in the way of reduction or extended limit or whatever it was, or new tickets, and I might say for your information that we had our tariff set up by the printers in three different ways. We didn't know what to do until just in time to get them printed and rushed to Washington and filed before twelve o'clock on Saturday, December 12th.

Q. All of this is immaterial—

A. You raised the question.

Q. I wasn't asking you about the printing establishment?

58 A. I was just telling you how we did that.

Q. Now, there has been an effort on behalf of your railroad company to apply in Maryland the ruling established in Pennsylvania at the rate of one and a half cents per mile on 100-ride tickets; that would increase the cost, say from Parkton to Baltimore, how much? What's the present 100-ride ticket?

A. \$22.50.

Q. What would be the increase at a cent and a half per mile?

A. \$43.20, a rate increase of \$20.70 on that one and a half cent a mile basis. Before you go further into that, I want to say that this is a general basis of a cent and a half a mile—I don't know what offer was made; I know nothing about that. With a minimum of double the monthly fare—in other words, where the monthly fare is \$4.75 the 100-trip fare would be \$9.50; where the monthly fare is \$4.90 the 100-trip fare is \$9.80, and where the monthly fare is \$5.05 the 100-trip fare is \$10.65. Then it gets above twice the monthly fare.

Q. Now, at Cockeysville the present 100-trip ticket costs \$14.40?

A. Yes, sir.

Q. And at a cent and a half a mile that would be?

A. \$22.35.

Q. What would be the monthly fare to Cockeysville under the new tariff?

A. You mean with the change in the limitation?

Q. I beg your pardon?

A. Change in the limitations?

Q. No, the change you have proposed?

A. The change we now propose is \$7.45. But, that is reduced by the modified ticket.

59 Q. That is reduced to how much?

A. \$7.25—approximately one cent more than the old fare.

Q. Double that would be \$14.42?

A. Well, that is, the 100-trip ticket shall not be less than \$14.42. One and a half cents a mile, but no less than double the monthly fare. That would only apply to nearby points.

Q. But the passenger at Cockeysville instead of paying a monthly fare of \$14.40 would have to pay \$22.35?

A. Correct.

Q. And at Lutherville?

A. At Lutherville the old fare is \$11.70 and the new fare \$15.75.

Q. What is the monthly basis; the modified monthly basis?

A. \$5.90, that is approximately \$5.90. The quotation is \$6.10. Will you let me explain how that comes about?

Q. Certainly.

A. A man buying under the old system twelve monthly tickets secures 720 trips in a year, or 360 round trips. That provided transportation on an average of thirty days a month. The new ticket is good for thirty-one days—thirty days from date of issue. You can begin on the first of the month and go until the 31st. If you buy it on the 10th it is good for thirty days in addition to the 10th of the month. That is an increase in the time of one-thirtieth. I have figured out an estimate here which shows that for the year 1915 if a man wants to travel on Sundays or week days he can go through the year with 11 2/3 tickets instead of twelve, understand?

Q. Yes.

A. Now, that reduction is approximately one-thirtieth, and if you take Lutherville, \$6.10, one-thirtieth of that is twenty cents.

60 Q. You have to travel every day in order to do that?

A. He has trips enough to go nearly every day.

Q. The daily commuter isn't benefited by that—

(Mr. Bikle:) He doesn't have to travel every day to do it.

A. We don't make commutation rates for 60-trip tickets.

Q. How many trips does that give a year?

A. 11 2/3 would be 700.

Q. Now, the average working days of a year being 313, he would have 7 trips to use any time he wanted?

A. Oh, yes. He can go to church on Sunday or theatre in the evening—two round trips a day—or to his club—

Q. Assuming to be real commuters, as you describe them—

A. I said daily, at least six days in a week—he would be paying for something he wouldn't get. He is paying by the month; he isn't paying per trip, and we try to give him trips enough to see him through the month. I know some railroads in a thirty-one day month give them 62 trips, and in a twenty-eight day month give them 56 trips, exactly two trips every day. Just as a boarding house gives you three meals a day regardless of the length of the month. In a thirty-one day month you get 93 meals; in a twenty-eight day month you only get 84 meals.

(The Chairman:) We have heard that, Mr. De Long, once or twice.

Q. At Ruxton, the present rate is \$10.50 and a cent and a half a mile would be—

A. \$12.60.

Q. Now, that is a much greater increase even at Ruxton than your percentage increase on monthly tickets, is it not?

A. The increase on the monthly ticket—yes, it's a greater ratio of increase.

61 Q. If we assume that your experience of thirty some years that you have testified to, gives you the advice that the proper way of figuring commutation rates is considering what the basic rate is and then figuring the advance, how do you justify your present increase?

A. The cent and a half a mile?

Q. Your cent and a half a mile?

A. Well, if I were called upon to justify it I would call attention to the fact that this is travel of an entirely different nature. It is not daily travel for residential purposes. That man would not buy a monthly ticket.

(Mr. Bikle:) We didn't justify that, Mr. Bowie. That is not our proposition.

(Mr. Bowie:) You offered it to this Commission as being a fair and adequate rate.

(Mr. Bikle:) No, sir; we haven't at all.

(Mr. Bowie:) I so understood it. I understood the proposition made to this Commission was that the railroad would put into effect the rate ordered by the Pennsylvania Commission if acceptable to the complainants in this case.

(Mr. Bikle:) That's true.

(Mr. Bowie:) Therefore, you are not offering that rate as being a fair and just rate; in other words, you are willing to put in a fair and just rate if the Commission approves it.

(Mr. Bikle:) We are ready to deal with the Baltimore patrons as we are trying to deal with the Philadelphia patrons.

Q. Now, Mr. De Long, will you tell us the average earning per train mile of your trains between Baltimore—your suburban trains, of course—between Baltimore and Cockeysville?

(Mr. Bikle:) May I interrupt you? That statement has been prepared by Mr. Fell. Would you just as lief ask Mr. Fell about that?

62 (Mr. Bowie:) Certainly.

Q. In point of fact, is not the monthly ticket an expensive ticket in that the passenger might be sick and not use his rides? Doesn't the 100-trip ticket give him protection over that? Even a man in a boarding house, if he is sick any length of time and sent to the hospital, he doesn't pay his board?

A. He would have to be away for a considerable time, and if the man is away a month he doesn't have to pay any commutation fare.

Q. Suppose he is sick a half a month?

A. We do not sell monthly tickets at a monthly ticket fare for anything less than a month.

Q. Have you any ticket that does provide for a contingency when a man who might be sick or a man who might be away riding on your line in some other section of the country for a week or two?

A. You mean the daily commuters?

Q. Yes?

A. We have no provision for that. That was recognized by the fact that we were to sell 60-trip monthly tickets for less than daily trips. That is a very uncertain factor. There may be a certain number of one case and another number of another case.

Q. Then you do not make any distinction between a man who travels three times a week and a man who makes one trip in a long time, in so far as what pays for that service?

A. We do not under the proposition—under the fares in effect today, except with the 10-trip ticket. The 10-trip ticket provides that. Might I add to that?

Q. Certainly, sir?

A. In making reductions from normal passenger fares we cannot recognize any such factor as frequency of trips, because to 63 do that you would have to establish a fixed number within a fixed time, and that number would be a source of continual dickering and therefore every man would want to be counted in. The only safe method is to establish a monthly fare as we have established for a month. For instance, if you make three trips between Ruxton and Baltimore a week and claim a reduction on account of the frequency of the trips, why should not the man who makes three trips between Baltimore and New York want to have a similar reduction?

Q. If you are going to make a comparison of that kind, Mr. De Long, which is absolutely and manifestly outside of the question, why should you not take the position that your commutation fares are all wrong and you ought to charge the same as you do for New York trips right straight through?

A. Because the 60-trip monthly fare is not based on the frequency of the trips, but on the regularity of the trips.

Q. You don't give the man who goes to New York special rates?

A. Not if he goes every day in the week. He doesn't commute; he doesn't go there for every-day purposes. The object of the trip has a use in fixing the 60-trip fare; plays a most important factor in the same.

Q. May I ask what is the difference to the stockholder whether the commuter comes in for pleasure or for business—

A. Makes considerable difference.

Q. Assuming that he makes the same number of trips?

A. The 60-trip monthly fares were especially and principally established for the use of the man who travels daily between his home and place of business and occupation. The nature of the trip; the regularity of the trip as to being daily and to some extent the regularity of the trip as to the hours of the day and the consequent regulation of rain service—all these were taken into consideration in fixing the fares. No such factors exist in any other class of passenger traffic, and if we are not permitted to make these the basic factors, commutation fares are jeopardized at once.

64 Q. Will you please answer the question?

A. I did.

Q. Mr. Stenographer, will you please read that question again?

(NOTE.)—Question here read.

A. I will explain that question and give an hypothesis.
Q. I would like you to answer the question?

(NOTE.)—Said question here read.

A. It makes a great difference in the revenue because in one case the revenues are supposed to be increased and in one case they are decreased.

Q. Will you explain that; how they are increased or decreased?

A. Yes. As I said before, commutation fares are fixed for that particular class of travel, that is specializing in a high degree. If you apply commutation fares to any other class of travel you are depleting your net revenues. A commuter comes to us, as I think you said in your objection there—they should be considered in fixing a fare, but as soon as that traffic has been created the commuter comes in with an explanation, whereby they are really endangering their own fares and depriving us of the expected revenue on their class of traffic, which should be the usual fares.

(Mr. Bowie:) Mr. Chairman, the question is not important, but neither one of the answers have been replied to my question.

(The Witness:) If you will read that again I will answer it.

(NOTE.)—Said question here read as follows:

Q. May I ask what is the difference to the stockholders whether the commuter comes in for pleasure or business, assuming he makes the same number of trips?

65 A. Daily commuters?

Q. Yes?

A. No; that doesn't make much difference to us so far as the revenue is concerned. We do not object to the daily commuter that comes in daily for business—in pursuit of his business occupation—or comes in for some other purpose.

Q. The commuter creates the traffic, not only passenger but also freight?

A. It is so held by a great many people.

Q. Isn't that your experience?

A. In a great many cases I think so. In other words, he co-ordinates with the other traffic. I know cases where they don't have that traffic. For instance, that is particularly true between a large center population and suburbs. It is not true where you have two points more fully developed.

Q. But taking conditions along the Northern Central?

A. Yes; here the traffic is specialized.

Q. There are no industrial centers along the road?

A. Not very many.

Q. And the more people hauled, the more freight you haul?

A. It means more population and more traffic and extension of the boundaries of a community—

Q. Doesn't the man that lives out there and comes to town only five days a week create the same condition, as far as the freight traffic and the development of the community is concerned?

A. Not quite.

Q. Does not?

66 A. No; the commutation fares are established for a month and the other man isn't taking it by the month.

Q. I am asking about the conditions, of freight and also the package revenue?

A. Oh, yes. You might say so; there are plenty of other travellers that do the same thing.

Q. What other travellers?

A. Commercial travellers.

Q. Commercial travellers go up and down the Northern Central when there are no commercial centers there? I am asking you about the Northern Central?

A. That is true. I don't know that they do much there.

Q. As I understand your answer, a man who travels five days, or even three days a week, doesn't contribute to the revenue of the railroad as a permanent revenue by creating a freight condition or a package condition to some extent?

A. To a very slight extent.

Q. Assuming the man resides along the Northern Central Railway?

A. Doesn't have to travel.

Q. Comes in even three times a week; he is contributing considerably to the increase?

A. Yes, sir; if he pays compensatory fares.

Q. Isn't he entitled to any consideration in your passenger rates?

A. Certainly.

Q. Do you give him any?

A. We give him a 10-trip ticket.

67 Q. What does it cost him?

A. Two and a quarter cents a mile; exactly the same as travelling on a 1,000-mile ticket.

Q. In other words, you don't give him any advantage in passenger transportation than you do over the man who occasionally sees that section of the country from a car window?

A. We give him wholesale rates the same as we do a purchaser of a mileage book.

Q. And you charge him more than twice what you charge his next-door neighbor who travels daily?

A. Oh, yes; for residential purposes. There is the difference between the two; a decided difference.

Q. Now, if the 10-trip ticket which has been established since 1897 on the Northern Central is dropped simply because of decreased revenue, by the same token did you not discontinue the 60-trip ticket?

A. No, sir.

Q. You would get more revenue if you charged them full rates?

A. Then he wouldn't travel, as a class.

Q. In other words, you want—as I understand your answer then—you want to force the men who can't travel every day, not to travel on your road?

A. Oh, yes; yes, we do. We seek to have him travel as often as he can. The more he travels the more—

Q. Assuming he can't travel every day, what inducement do you offer him to travel?

A. 10-trip ticket or a mileage book.

Q. That's practically the full rate?

A. Ten per cent less than the full rate.

68 Q. That's simply because he invests more money in it?

A. Oh, no.

Q. Isn't the principle of selling these tickets, isn't it simply the wholesale—

A. The wholesale idea, yes.

Q. And you are not really giving him any more commutation, because he gets the same advantage in commutation transportation?

A. If he buys to resell, yes.

Q. And you offer no inducement if he don't travel every day?

A. Nothing less than a one-way fare. We think that is a very good reduction. Our viewpoints are diametrically opposite sometimes.

Q. Now, Mr. DeLong, are you in a position to testify—I ask you this as preliminary—to testify as to the revenue derived from the Northern Central?

A. Of business?

Q. The passenger business?

A. No, sir. Mr. Fell has those.

Q. Is the business derived from commutation fares on the Northern Central under the present system profitable or unprofitable?

A. I wish you could give me a way to determine that. It depends upon what you mean by profitable. If you mean in and of itself that it bears a good revenue over and above all expenses that are directly chargeable to that traffic, then I would say no.

Q. That isn't the correct basis for figuring *traffic* on passenger traffic, is it?

A. That's one basis.

69 Q. In order to arrive at whether passenger traffic is profitable or unprofitable, you take into consideration a number of things other than the elements you just stated?

A. We do not consider commutation travel.

Q. But in all travel, there are other considerations entering into it besides the direct revenue derived?

A. Might I give you the general basis we try to follow?

Q. Certainly?

A. We establish, as I say, a one-way fare at so much per mile—not to exceed so much per mile as fixed by charter, or legislative enactment, or order of a Commission. This is what we call the normal fare. Now, in making a reduction from such a fare we use the judgment whether such a reduction will bring out additional travel—you might say domestic travel in its sufficient quantity—it would not move at a normal one-way fare so as to yield us additional net revenue. We never make a reduction with the object in view of reducing our net revenue, nor do I think that any special class of traffic would rightfully ask us to make a reduction in fares that would result in a reduction in the net passenger revenue.

Q. Referring to the result of whether your passenger business is

unprofitable or profitable, you take into consideration in addition to the net money that it might turn over to your general fund, the fact that it increases the equipment of the road?

A. No, sir.

Q. You do not?

A. No, sir.

Q. You take into consideration the fact it enables you to provide more facilities along the road?

A. Oh, no. When we make a reduction in fare—

Q. I am not asking about a reduction in fare—

70 A. We do not take that in view at all. We don't make a reduction so as to add more trains and cars or build more stations.

Q. Does your basic fare or normal fare, as you term it, pay?

A. Yes. Considered by itself, it pays.

Q. Now, the reductions from your normal fare are not made for the purpose of depleting your revenue, but for the purpose of increasing it?

A. Net?

Q. Yes, your net revenue?

A. Yes, that's correct.

Q. Therefore your passenger business considered generally is profitable. Otherwise, you would discontinue it, would you not?

A. Oh, no. We couldn't discontinue our passenger service. We have tried that in spots and met with serious objection.

Q. Coming down to the Northern Central, hasn't it been very profitable along the Northern Central?

A. No, sir. Mr. Fell will testify to that, but I can give you a general knowledge, and especially in this Parkton section.

Q. Has it been profitable out of Philadelphia?

A. Suburbs?

Q. Yes?

A. Pretty hard to determine just the actual expenses of running suburban service. That is pretty difficult to get in a correct manner—the division of expenses that are included in connection with suburban traffic as well as through traffic.

Q. Doesn't your railroad consider the suburban traffic out of Philadelphia profitable?

71 A. We consider it desirable.

Q. Do you consider it profitable or unprofitable?

A. We can't exactly determine the exact cost of rendering that service.

Q. Is your through passenger service profitable?

A. As a class, it is.

Q. Why did you take off two passenger trains out of Philadelphia in order to provide more local trains?

A. Because a commuter—a daily commuter going to his place of business or occupation has to be there at a fixed hour and when a station like that at Broad Street Station is packed beyond its capacity during the commutation hours, through the station in the morning between six and nine and out from four to seven, we can't delay

the commutation train and get him late to his work and business. For that *reference*, they must have the preference, if you can only get a certain number of trains into Broad Street Station at that time—the commutation trains as a class have the preference over the through trains. We feel that way, because a commuter buys his commutation by the month and we are obliged to give him service correspondingly to meet his peculiar requirements, which are entirely different from any other class of travel. He has to be there on the spot on the minute as near as we can get him.

Q. Has anything occurred since the hearing in Pennsylvania to change your views as to the profitableness of suburban traffic?

A. As a class?

Q. Yes?

A. If you mean profitable—

Q. You misunderstand my question. Has anything occurred since the hearing in Pennsylvania—

A. No, sir.

72 Q. Didn't you testify in Pennsylvania that you considered it profitable?

A. No, sir. The newspapers reported me that way, but I didn't say it.

Q. Why is it desirable to deplete your revenue?

A. I didn't testify that.

Q. But if it does deplete your revenue it can't be profitable?

A. I can't tell you that. If all the passengers on our system were commuters at commutation rates of one cent a mile or less, Mr. Fell would have to change his statement here and take out all the increase columns all the way through. I think that fact is obvious to everybody. In and of itself, it is not profitable, but we never consider it disassociated from other traffic.

Q. If this commutation service is so desirable, why is it your railroad prefers to give the right-of-way to through passengers on the northern Central Railway?

A. I can't answer that question; the operating department would have to answer that.

Q. Do you know why an appeal was taken from the decision of the Commission giving the local trains the right-of-way?

A. No. That was handled by our transportation department.

Q. Who is that in the transportation department?

A. I don't know. I read the conclusions reached there, but I didn't read who represented the company there; I don't remember. It only illustrates the fact that the commuters think the railroad is obligated to get them to their destination in the morning on time, and he gets that ticket and pays by the month to have the train in there.

Q. Mr. DeLong, how much did you increase the passenger commutation fares out of New York?

A. Didn't increase it any.

73 Q. Why?

A. The same necessity didn't exist over there and conditions were entirely different. That commutation travel yields us a higher revenue per trip than out of Philadelphia; considerably

higher. In all these questions we do not compare the fares, but the returns—the revenue.

Q. The object of this increase is to provide a greater net revenue for the railroad?

A. That is correct.

Q. And an increase in New York would be contributing to the net revenue of the railroad?

A. I am afraid not.

Q. Why?

A. As previously stated, the average revenue per passenger per trip for commuters in that territory are higher than out of Philadelphia and I think higher than out of Baltimore. I will tell you that exactly. Now, that territory is similar with other suburban sections in New York, Long Island, New York State, upper New Jersey, where the fares were raised some four months ago. We raised the fares there at the same time—at a certain distance from New York. I might say for your information at that time we considered withdrawing various commutation trains around Philadelphia and other sections.

Q. You didn't do it?

A. No. The case was taken before the Interstate Commerce Commission, and our higher fares were approved part of the way, but not all of the way. They established the fact that our fare was too high to the most distant point; it was too low to the nearer point.

Q. Isn't it a fact that you proposed to increase the fares out of New York?

A. Commutation?

Q. Yes?

74 A. Not at this time, because if we did these suburban sections which are competitive with each other, and other sections retaining their fares which they got three or four years ago, we would be at a disadvantage and we would lose commutation traffic, probably more than the increased fares would give us in revenue.

Q. Then the newspaper account—that there was a conference between the railroads over an increase of commutation fares out of New York, and the fares were not increased because one or more roads declined to enter into it, are not true?

A. I have no personal knowledge of that. I do not think there was any conference devoted exclusively to commutation fares. I didn't attend the New York conference.

Q. What was your discussion in Philadelphia along these lines?

A. I understand that passenger fares were considered generally, and particularly regarding one-way fares and excursion fares. Through one-way fares were raised as a result of that conference—I told you before that the fares were raised four years ago. The 60-trip monthly fare from New York to Wornick was twenty-five cents higher than for the same distance out of Baltimore prior to December 14th. Now, it is the same.

Q. Now, didn't you testify in Pennsylvania that the rates of fare

were not increased out of New York, or because some of the competing roads were trying to enter into an agreement to do so?

A. I didn't know what the reasons were.

Q. Wasn't that your testimony in Philadelphia?

A. I don't think so. If you understood it that way, it was misunderstood. These roads out of there decided not to change their commutation fares at this time. They changed them about three years ago. I might say that railroad that you allude to, they didn't raise their fares at this time, which advanced four years ago. In one of their discussions, on the witness stand under oath, they stated that their commutation business was a detriment. We didn't say that. It is not a detriment to us.

75 Q. But you have knowledge of a conference between the railroads?

A. Only from report; I wasn't there. But what subjects were considered, I can't tell you.

Q. Did you have a conference in Philadelphia over the increase of rates?

A. Yes, sir; but not on this section from here to Parkton.

Q. Was the conference told anything about the increase of rates here?

A. Not from here out to Parkton; I believe that is the only question that is at issue here.

Q. Wasn't there a conference between your road and the other roads entered complaint as to the increase of rates to suburban traffic around Baltimore?

A. Outside of Parkton?

Q. Anywhere?

A. I am willing to answer that; yes, there was a conference held.

Q. And this increase was agreed upon at that conference?

A. It depends upon what you mean agreed.

Q. What the newspapers term the Gary Directors' dinner. There was no signed agreement to increase?

A. No, sir.

Q. Nor any understanding before you left?

A. Nor was it uniform.

Q. But there was an understanding that there would be an increase?

76 A. In a general way. Perfectly proper so. Railroads can't conduct any joint business between two lines unless they have conferences. They can't establish joint fares without conferences.

Q. Any joint fares involved in increasing rates out of Baltimore?

A. Not as I know of.

Q. Then, what was the object of the conference?

A. To get more revenue. There was a general exchange of views. The matter was very thoroughly discussed and gone into in all details.

Q. And because the B. & O. Railroad, in order to derive some increase in fares from Laurel to Washington, agreed to increase the fares from some place along their line?

A. No, sir. We made our fares from here to Washington separately, twenty-five cents more than the old fares. I might have called attention to the fact that our fare is twenty-five cents lower than the B. & O.

Q. Isn't it true that the B. & O. is at the present time carrying passengers from Laurel to Baltimore for less than your line?

A. I don't know that.

Q. And it was understood that each road was to increase the rates?

A. That was what they were supposed to do: suggested by the Interstate Commerce Commission to get together and do something.

Q. And you were following out that suggestion?

A. Yes, sir; we got together.

Q. And didn't you follow it out in New York?

A. We did—

77 Q. The get-together part of it. You testified your communication fares were not increased?

A. No, sir.

Q. So you only obeyed the Interstate Commerce Commission injunction in part?

A. The suggestion of the Interstate Commerce Commission was to get additional net revenue, and, as I explained to you, if we were to increase these fares from there we would not get additional net revenue.

Q. The competitor would get it, in other words?

A. The competing roads in competing sections. And we tried to protect the territory we served as against other territory. I can assure you that, to our own selfish advantage really.

Q. Well, this increase is practicable, is it not, to a point of how far the commuter will stand it—in other words, haven't you in Jersey, South Jersey, haven't you proposed to largely increase where you have no competition?

A. No, sir; same change all over, except those fares out of New York.

Q. You didn't make any in the New York and New Brunswick zones?

A. No, sir.

Q. But you did in South Jersey, where there was no competition?

A. We tried to; twenty-five cent fare on monthly ticket and twenty cent fare on school ticket. That's the only advance in the State of New Jersey, which we considered very, very small. Within the State of New Jersey we don't have any ticket such as a 100-trip ticket.

Q. Mr. De Long, do you know anything about the freight condition?

78 A. No, sir; only when I pay freight bills. That's all I know about that.

Q. Do you know anything about the proportion of expenses of railroads to freight and passenger?

A. Mr. Fell is able to throw some light on that subject. I don't know. I am a revenue getter.

Q. We readily believe that. If the Commission please, I will excuse Mr. De Long.

(The Chairman:) I would like to ask one question, Mr. De Long; is the rate charged on the 100-trip ticket, which is good for a year, reasonable as compared to the other rates?

(The Witness:) That we formerly charged?

(The Chairman:) Yes.

(The Witness:) No, sir; I don't think it is fair. It isn't fair to other classes and especially to other sections in which the 100-trip ticket was not sold. It was only sold out of Philadelphia and Baltimore, in this division.

(The Chairman:) What's the real difference between a 100-trip ticket and a 1,000-mile mileage book?

(The Witness:) Sold at a lower rate; a mileage book, two and one-quarter cents a mile, and a 100-trip ticket, one cent.

(The Chairman:) Under your old rate, mileage was two cents?

(The Witness:) Yes, sir.

(The Chairman:) And was good for 1,000 miles within a year anywhere on your system?

(The Witness:) Yes, sir.

(The Chairman:) And this other ticket is good for 100 miles for a year on this particular system, at a particular place? It is qualified to a particular locality?

79 (The Witness:) Confined to a particular locality.

(The Chairman:) What's the other difference?

(The Witness:) In the one case we were selling wholesale transportation at a reduction of twenty per cent from the normal fare; in the other case we were selling wholesale transportation at a reduction of one hundred and fifty per cent from the wholesale fare. That is what we object to—the high percentage.

(The Chairman:) What advantage does a man who has mileage get over the 100-trip ticket commuter?

(The Witness:) He pays twice as much for his transportation.

(The Chairman:) That's a disadvantage. Now, the advantages, what are they?

(The Witness:) I don't know of any. The transportation incident to the 100-trip ticket, so far as service is concerned—checking of baggage, station conveniences, and all of that—were the same. The only exception was the 100-trip ticket was confined to transportation between two designated points.

(The Chairman:) And the difference in price was one cent a mile?

(The Witness:) Yes, sir.

(The Chairman:) Do you consider that relatively fair?

(The Witness:) No, sir; not fair to us and not fair to any other class of travel.

(The Chairman:) Other classes of travel now?

(The Witness:) I do not think so.

(The Chairman:) On the Parkton Road, how many different classes of travel have you now?

(The Witness:) We have today—

80 (The Chairman:) I mean under the old rate?

(The Witness:) We had a one-way fare.

(The Chairman:) How much was that?

(The Witness:) Two and a half cents a mile. We had excursion fares.

(The Chairman:) How much?

(The Witness:) Two cents per mile. We had a 10-strip ticket, and in some cases there was 14 in a strip and some cases 11 in a strip. It was sold at ten per cent less than the excursion fare. Then, we had the 50-trip books. Then we had the 46-trip monthly book, which was sold at 46/60ths of the 60-trip monthly fare. We had a 180-trip quarterly book which was sold at three times the monthly fare less ten per cent. That was wholesale commutation. Then we had the 100-trip annual ticket sold at double the monthly fare. Then we had a 50-trip family ticket sold at two cents a mile.

(Mr. Bowie:) They weren't sold on the Northern Central.

(The Witness:) Oh, yes; we sold thirty-four in one year.

(The Chairman:) Then you had mileage?

(The Witness:) That wasn't peculiar to this territory, but we had mileage; yes, sir.

(The Chairman:) Now, what is your judgment of the relative fairness of the different classes of transportation compared with the 100-trip ticket?

(The Witness:) I think it's entirely too much of a reduction from the normal fare; I have tried to establish the fact that this ticket is largely used by others than real commuters, and that the only plan by which they can enjoy such low rates is the frequency of the trips, and that is the wholesale idea. Therefore, the selling of 100-trip tickets violates the whole idea of wholesaling by making a reduction of one hundred and fifty per cent from your normal one-way fare.

81 (The Chairman:) That particular class of ticket, in your judgment, doesn't contribute the proportionate part of a fair return on investment on that road?

(The Witness:) No, sir; it is unprofitable from a net revenue standpoint.

(The Chairman:) I am speaking now as compared to the different classes of riders.

(The Witness:) Yes, sir; I think so.

(Mr. Bikle:) This particular 100-trip has never been in use out of New York?

(The Witness:) No, sir.

(Mr. Bikle:) Has there been any ticket corresponding to it on the same low basis of approximately one cent a mile?

(The Witness:) We sell a 50-trip family ticket there.

(Mr. Bikle:) What's the approximate basis of that?

(The Witness:) 1.6 cents a mile.

(Mr. Bikle:) But there has been no ticket on the approximate basis of one cent a mile annual ticket?

(The Witness:) No, sir.

(Mr. Bikle:) What arrangement is made for reduction of commutation tickets in the case of a man who is sick for a substantial portion of a month?

(The Witness:) No reduction on that account.

(Mr. Bikle:) If the trips used—

(The Witness:) Excuse me; if a man buys a 60-trip monthly ticket or a 100-trip annual ticket or a 180-trip ticket and uses only a portion of the ride, we charge a higher fare for the portion used and refund the difference. Take the case of 180-trip quarterly ticket for the months of January, February and March. If 82 a man has made 120 trips in January and February and none in March, we charge him by the monthly fare and refund the difference to him. If he has a monthly ticket and uses ten trips we charge him five excursion fares and refund the difference. We give him the very highest fare for the rides taken.

(Mr. Bikle:) You mean the very lowest?

(The Witness:) Yes, sir, the very lowest, giving him the highest return on the ticket.

Q. You said you were a revenue producer?

A. No, a revenue getter.

Q. There is one point I omitted, that was, does not your road on the Northern Central branch obtain a large revenue at the present time from the package stamps? Does that come under your department?

A. That comes under the general passenger agent; out of Philadelphia there is a pretty good revenue—I don't know about here—a substantial revenue. We like to get it.

Q. That has recently been put on?

A. Yes, sir.

Q. I mean for marketing and—

A. Yes, sir.

Q. How much do you expect to increase your revenue by taking off the 100-trip ticket and the other increases you propose?

A. I think I have a few figures—

(Mr. Bikle:) If I might interrupt again, we have it all tabulated and if we might put this in at this time, it will, I think, somewhat clarify the discussion.

(NOTE.) Said paper just above referred to is here filed in evidence and marked "Company's Exhibit No. 3."

83 (The Witness:) Between here and Parkton—I might say with the expectation, before this statement is cross-examined in detail—I want to say it is based with the expectation and the assumption that the same number of tickets will be sold at the new fares that we sold under the old fares. If we don't, then we must reduce this estimate proportionately.

Q. This total shows \$134,000.00, that is the present sales?

A. That's the sale for one year that we had before putting that system in.

Q. And you expect to increase this twenty-one per cent, is that the idea?

A. On the basis outlined in that reading matter (indicating).

Q. You forgot the Interstate Commerce Commission suggestion to increase, did you not, at that time?

A. We expect to get \$29,000.00 additional revenue without any appreciable additional expense.

Q. And you ask the Interstate Commerce Commission to let you get five per cent additional revenue without any increased expenses?

A. That's on freight.

Q. I know, but don't you represent to the Interstate Commerce Commission that that would put all the roads on a paying basis?

A. I don't know. I know they said, get more revenue on your passenger business. That is the freight department—

Q. Don't you know of the roads asking permission to raise their freight rates five per cent?

A. I know it from reports—newspapers—just the same as anybody else. In considering these questions, we don't consider freight traffic as a factor at all.

84 Q. Now, Mr. DeLong, you say these figures are based upon the assumption that the same number of passengers will ride—

A. With the exception noted, that's correct.

Q. That is immaterial?

A. That's very material. We expect to lose considerable.

Q. How many of the passengers who now ride on the 100-ride ticket do you expect to lose?

A. I will read what it says there (indicating). Say, one-fourth of the tickets were used in five months—an average of five months and another fourth an average of eight months and we have 1,064 tickets, revenue produced in the year, \$14,072.52, average one cent per mile. We estimate one half of this will not materialize. Then, the only recourse they have is to buy a new 10-trip ticket two and a quarter cents per mile, which is an increase of one hundred and twenty-five per cent, of \$7,036.25, or a total increase on 100-trip tickets of \$12,830.91. That is what we expect just to get out of the people that have used the commutation ticket without being bona fide commuters. That might be called quasi commutation.

Q. I have never ridden on anything less than a 100-ride ticket?

A. If you were not traveling daily I would call you a quasi daily.

Q. I travel every day and I ride on your 100-ride ticket with the exception of an average of two or three weeks a year when I am engaged elsewhere in business and usually on your own system?

A. If during the eleven months of the year when you travel daily you could do much better by getting the monthly ticket—you could get one hundred and twenty trips instead of one hundred; you could go to your theatre or church or club or anywhere.

Q. Now, what do you anticipate would become of the rest of that traffic?

85 A. I am afraid that will go into the twilight zone. That is something that is merely an estimate; it might be an agreeable surprise.

Q. What percentage do you expect to go into the twilight zone?

A. I say about one-quarter of the total trips that were taken on the annual ticket in a year.

Q. Take Ruxton—100-ride tickets seem to be very popular?

A. I expected that question. I figured it out on the way down. At Ruxton on the 100-ride ticket we expect to gain \$1,106.25. Hold on—I don't want to give you that. Here, I have it, \$1,117.50. That is on that basis laid down in there (indicating).

Q. What does that basis—how is it established, on experience?

A. Oh, no. It is based on experience and observation and the amount of passenger traffic.

Q. Now, as an expert on passenger traffic, you would say that would be reasonable?

A. That is a hopeful estimate.

Q. Now, you were going to drive in Ruxton, fifty people into the twilight zone?

A. No, we will give them an opportunity to pay normal fares. We don't drive people off the railroad; we want to attract them. It is our duty to give good service and it's the public's duty to pay us a compensatory fare.

Q. If you drive fifty people into the twilight zone that will decrease your average receipts?

A. I don't think so. I don't think they will move away from Ruxton on that account. A few may; they will make fewer trips.

86 Q. You are figuring to do it?

A. No, I am figuring on losing one-quarter of those trips. I am not figuring to lose any of those patrons. In other words, the man who did travel on a 100-trip ticket, coming down quite frequently, he won't come quite so frequently. That will mean a loss of one-quarter of the trips. We don't expect to lose the passengers; but expect to have a decrease in trips.

Q. You don't expect to drive anybody away?

A. Oh, no; we hope not.

Q. You have testified that on the 60-trip ticket you will drive too many people away?

A. You don't drive them away; you stop the flow of traffic. They will only bear a certain amount. If it's a working man, it will reach about the difference in the cost of living between the City of Baltimore and the suburbs. He is willing to pay that much for commutation a month—maybe a difference in the rent—if you make it too high he will stay in town.

Q. Or move to town, if in the country?

A. Yes, that's the 60-trip ticket. I don't think the 100-trip ticket was used very much by a working man going daily to his work. They would use the monthly ticket.

Q. Now, what do you expect to become of a man who has gone out in the country and bought his home—a carpenter is the case I used in the beginning of this examination—who comes into town five days a week and has bought his home and based on the assumption that he can travel on your 100-ride ticket; what do you propose to offer him? Must he sell his home?

A. Oh, no; not at all. Those are the trips that go into the twilight zone. As I say, if he travels daily—

Q. But he is traveling five days—an average of five trips a week?

A. Then he must be well enough off, if he can lay off a day.
87 Q. He can only obtain work that frequently?

A. That's one of those conditions I don't know. It is within the *provision* of the railroad company to consider. We have fixed fares in general—not isolated cases here and there, to meet the requirements of each and every individual.

Q. And the men that are riding three and five days a week—they will have to go to town?

A. Not necessarily, they have the 10-trip ticket.

Q. At a prohibited rate?

A. Oh, no; I don't admit that. They will have to do the same they did before the 100-trip was introduced. I suppose conditions were the same then.

Q. That was eighteen years ago and we have developed this since then. Mr. De Long, you know economical conditions as well as I do?

A. I do; just at this time they are pretty bad.

Q. You have told this Commission, in the first place, that the abolition of the monthly ticket would mean driving these people off the road—people that couldn't afford a higher rate?

A. I didn't say drive them off the road, but stop commutation travel—

Q. That means the same thing—that means that he can't ride?

A. Not necessarily.

Q. Will you please tell me how you expect a man to work three to five days a week and not ride on your road?

A. If a man were living, say at Ruxton, and employed in Baltimore three days a week, he might leave his employment here and get employment at Ruxton, not necessarily move away. Or, take it the other way: suppose a man lives in Baltimore and is employed in Ruxton.

88 Q. Let me state my question: You are not familiar with the Northern Central community?

A. I am in a general way.

Q. There are no industrial centers along that road until you get up to Cockeysville; there are no manufacturers and no stores, consequently the laboring man of necessity, if he rides on your trains, must ride from a residence in the country to a business in the city or near the city. That man, if he can't go the number of days he is required to go, must give up his job, and he certainly can't get a job in the neighborhood because none are to be had. Now assuming these conditions, what are you going to do with him?

A. Ask him to pay the same fare as any other person under like conditions, because he travels less frequently or the nature of his employment is different or irregular—these very facts do not bring him within the proper class of real commuters.

Q. And you have arbitrarily considered the man who rides at least daily is a real commuter?

A. No, sir; that is the historical development of commutation.

Q. How much revenue has been derived from the sale of your package stamps?

A. You mean the stamp ticket?

Q. No, the package stamp?

A. I don't know. That is handled by the package department. I could have gotten it for you had I known you wanted it.

(Examination concluded.)

(NOTE.)—Recess here taken.

(After recess.)

89 Rev. Dr. JOSEPH F. PLUMMER, a witness of lawful age, produced on behalf of the complainant, having been sworn according to law, testified as follows:

Redirect examination:

(By Mr. Bowie:)

Q. Mr. Plummer, you live where?

A. I live at Glencoe, on the Northern Central line.

Q. Do you use the Northern Central?

A. Oh, yes.

Q. Now, will you tell the Commission briefly, the condition prevailing around Glencoe with regard to the use of the 100-trip tickets? You know the people are using the 100-trip tickets?

A. Yes. The 100-trip ticket and the 10-trip ticket also we regard as essential to the well-being of our community. My parish is interested in the matter because it effects the general interest of the country upon which the parish depends. I am rector of the Episcopal Church there. A large section of my parish is a school, a girl's school in the community which draws its pupils from all over the country, and the welfare of this school depends upon their being able to get in and out of the city frequently, but not by any means every day. The teachers have to chaperon the girls, it is a girl's school, in and out of the city, and they depend upon the 100-trip tickets. Some of them use up two or three in a week, others use only one or two, but if the rate is increased by the discontinuance of the 100-trip tickets or the limitation of six months would increase it, it would work a real hardship in our community. We have invested a good many thousand dollars in the equipment of this school, and there are foremost property owners in my parish who have homes out there, and there are still others having business in the city who have invested a good many thousand dollars in their firms, and they feel that to raise the rates would effect a more or less constant intercourse with the city which they now have under the 100-trip tickets and for their employes and other members of their families under the present 10-trip tickets would amount to a

90 certain degree to confiscation of their property, which they have paid out, and that would make it practically impossible for them to live out there and do business in the city, and in

some cases would compel them to sell their property for what they could get for it and move into apartments in the city.

Q. You say the effect upon the school there would be to stop its activities or impair them?

A. It would certainly impair them. The school is too well established to be very easily put out of business. I wouldn't go that length at all, but it would certainly work a very great hardship and one against which they feel they have a right to be protected by the Public Service Commission.

(NOTE.)—No cross-examination.

(Examination concluded.)

F. J. FELL, a witness of lawful age, produced on behalf of the complainants, being first duly sworn according to law, testified as follows:

Direct examination:

(By Mr. Bowie:)

Q. Mr. Fell, what is your position?

A. I am statistician of the Pennsylvania system lines east of Pittsburgh.

Q. And you are familiar with the statistics relative to the Northern Central Railroad?

A. I am.

Q. Can you tell us the capital stock of the Northern Central Railroad?

91 A. Just a moment. The capital stock on December 31, 1913, was \$19,342,500.

Q. That was of what date?

A. December 31, 1913.

Q. Was that prior to the—

A. (Interrupting:) That was prior to the effectiveness of the lease of the Pennsylvania.

Q. When was that stock dividend of 40 per cent. declared?

A. I don't recall the date, but I think it has been since June 30.

Q. Well, that's not included in this?

A. Not included in the figures I have given you.

Q. The Pennsylvania Railroad leased the Northern Central and that lease was effective June, 1910?

A. Well, it was effective January, 1911.

Q. They granted what rate of income on the stock?

A. Eight per cent. on the stock.

Q. Now that is on the increased basis of 40 per cent?

A. On the capital stock as I have indicated to you.

Q. On the existing. As a point of fact, does not that include the increased stock?

A. It does.

Q. So the holder of stock, who has been holding it some time, as

a matter of fact, gets something over 11 per cent, does he not, income on his investment, on the part of his investment?

A. Well, we haven't calculated that to that particular detail, but the stock dividends of the Northern Central Railway—of course, I would like to say that prior to this stock dividend there has been a great deal of money expended out of earnings in connection with additions and betterments of the property. That, of course, was put into the property and withheld from the stockholder. The stockholder has to get the benefit through the stock dividend.

Q. The existing capital stock is how much at the present time?

A. Well, it is 40 per cent on that \$19,342,000.

Q. And the dividend you granted of 8 per cent on that gives you 11.2 per cent on the original capital stock?

A. Approximately, yes.

Q. Do you know what the stock is selling at at the present time?

A. No, I do not.

Q. How far back do your records go as to the dividends on Northern Central Railway stock?

A. Well, I think I can take you back some little distance.

Q. Well, now going back, what dividend has been paid in the last—that is, has there been no change in the dividend, and if so, indicate it?

A. About how far back would you like to go?

(Mr. Whyte:) Eighteen years.

(The Witness:) Eighteen years. Starting what year?

(Mr. Whyte:) 1886.

(The Witness:) In 1886 there was an 8 per cent dividend; in 1887, 8 per cent, and a stock dividend of 10 per cent; in 1888, 7 per cent; 1889, 8 per cent; 1890, 8 per cent; 1891, 7 per cent; 1892, 7 per cent; 1893, 9 per cent; 1894, 7 per cent; 1895, 7 per cent; 1896, 7 per cent; 1897, 7 per cent; 1898, 7 per cent; 1899, 7 per cent; 1900, 7 per cent; 1901, 8 per cent; 1902, 8 per cent; 1903, 8 per cent; 1904, 8 per cent; 1905, 8 per cent; 1906, 8 per cent; 1907, 8 per cent; 1908, 8 per cent; 1909, 8 per cent; 1910, 8 per cent; 1911, 8 per cent; 1912, 8 per cent; 1913, 8 per cent, and 1914, 8 per cent.

(Mr. Bowie:)

Q. Now go back beyond 1886?

A. '86?

Q. Going back for a few years, '85?

A. '85 was 8 per cent.

Q. '84?

A. 8 per cent.

Q. '83?

A. 8 per cent.

Q. '82?

A. 6 per cent.

Q. '81?

A. 5½ per cent.

Q. '80?

A. No dividends paid between 1876 and '81. 1876 was only 3 per cent; 1874, 3½ per cent; 1872, 6 per cent. Between 1877 and 1880, inclusive, no dividends were paid.

Q. That's the time of the depreciation, and railroad strikes and all that. They were very large along that period?

A. I think so; yes, sir.

Q. Now, will you tell us, please, the gross earnings, per train mile on your trains from Baltimore to Cockeysville?

94 A. Yes, sir. The passenger earnings—the figures that I have are the passenger earnings by runs of trains as computed by the operating department; that is, same run to Parkton, same run to Cockeysville, and the figures I give you will be made up in that manner. Trains between Baltimore and Parkton earned 54 cents during the period January to October. Trains between Baltimore and Green Spring, 33 cents per train mile.

Q. I didn't ask for Green Spring?

A. All right. Baltimore to Cockeysville, 55 cents.

Q. And the Harrisburg local train?

A. I haven't the local figures. All the trains between Baltimore and Harrisburg from Union Station earned \$1.63 per train mile as compared with the 54 and 55 cents on the local trains.

Q. Now, in arriving at these gross earnings, what—those are the gross earnings, are they or not?

A. They are the passenger earnings per train mile. The gross passenger earnings per train mile.

Q. Now, figured in that is included what?

A. The passenger earnings only.

Q. When you say passenger earnings, what do you mean?

A. Earnings from passengers who rode on the trains.

Q. Do you include the package stamps?

A. We do not.

Q. Do you make any—what are the net earnings?

A. On those particular trains?

Q. Yes?

A. It is impossible to tell what the net earnings are. That can only be done through a special study of that situation.

95 Q. Well, now, has there been any attempt made to figure that out?

A. I haven't; no, sir; and don't know of any attempt to ascertain what the net passenger earnings were on that particular section of the road. We can draw some conclusions, however, by a comparison with the general expense on the entire Northern Central Railway or the Baltimore Division.

Q. Just let me get this thoroughly understood. Your computation of an average of 54 cents to Parkton, and 55 cents to Cockeysville, on your earnings per train mile, that being gross, there are no deductions whatever from your ticket receipts. Do you charge deductions for that before you figure it in your salaries?

A. No, these are the receipts.

Q. Those are the receipts?

A. In other words, that's the total money. We put it on the

money basis. That's the total money collected from all passengers who used the trains between Baltimore and Parkton divided by the number of miles which the train run.

Q. I see?

A. And that entails 2,794 trips on the Cockeysville run, and that, you see, is for a ten months' period, and not for one month.

Q. How does that compare with your earnings per train mile in Philadelphia?

A. What particular section of Philadelphia? The suburban?

Q. On your suburban, of course?

A. Well, the suburban earnings out of Philadelphia were \$1.06 cents per train mile for this same period, similar statistics, was \$1.06.

Q. That's 30 miles out, is it not?

96 A. Twenty miles.

Q. Cockeysville is how far?

A. I don't recall the distance. Oh, yes, I can give you that; 14.9 miles, I have, almost 15 miles. We would naturally expect, of course, a greater earning per train mile on a shorter distance than for a longer distance.

Q. Will you give us the value of passenger equipment, say, on the main line of the Northern Central in suburban service.

A. Now, I can't do that.

Q. Why not?

A. I don't have those figures.

Q. Could you get them and furnish them, please?

A. Well, I will look into that and see if they can be furnished, if the Commission wants it.

Q. You have it for the whole system, have you not?

A. Well, I know what the passenger cars cost for the Pennsylvania System, if you want that—the entire Pennsylvania system.

Q. No; I want the value of the passenger equipment used on this line?

A. Between Parkton and Baltimore?

Q. Yes, sir?

A. Well, I am unable to answer that question.

Q. Can you give us those figures?

A. I presume they can be procured, but just how long it would take to get it I don't know. If the Commission wants it—

97 Q. I am asking you for it, sir. What is the amount in dollars, your passenger earnings, on the main line of the Northern Central for the past year? The net earnings?

A. Net earnings?

Q. The gross. You said you couldn't give the net, of course?

A. I can give you the Baltimore Division for the year 1913. The passenger earnings and the passenger expenses.

Q. What do you mean by the Baltimore Division?

A. I mean between Baltimore and Harrisburg, but as to confining any expense figure to this particular part, I can't do that.

Q. All right. Let's have that, please?

A. For the year 1913, on the Baltimore Division, the revenues,

the passenger revenues, were \$1,265,000 and some odd dollars. The expenses were \$1,387,000, an operating ratio of 109 per cent.

Q. \$1,387,000?

A. Yes, sir. That's the Baltimore Division.

Q. That is for passengers?

A. For passengers only.

Q. Now, will you explain to us how these expenses are arrived at?

A. Yes, sir. The expenses are—the Pennsylvania system has a method of dividing expenses between passenger and freight. The idea is to allocate to the passenger and to the freight those expenses which are entire passenger or freight, without question. The studies in that question indicate that 65 per cent of the expenses are naturally passenger or freight; the balance, 35 per cent, is divided upon some basis or other.

Q. Thirty-five per cent of allocated expense?

98 A. That's right.

Q. On what basis do you divide this?

A. Just let me finish that statement, if you please. The 35 per cent expenses are divided upon varying bases. It may be the revenue train mile; it may be upon the basis of certain car expenses; it may be upon the yard and locomotive mileage; it may be upon—oh, there are numerable bases on which it bases these accounts.

Q. Well, now, in the event of freight charges, how were they divided in arriving at this \$1,287,000 for expenses?

A. Well, I have given you a general idea. To give you the full detail of that would take all the afternoon. Now, if you will indicate to me just what accounts you would like to know, I will be very glad to answer your questions.

Q. I would like to know to what proportion of the Baltimore Division—that is, the Baltimore and Harrisburg Division—just what proportion of your maintenance expense—that is, the upkeep of your tracks—is charged to passenger travel?

A. Well, whatever we can allocate to passenger, we allocate to passenger. What we can allocate to freight we allocate to freight. The undivided expense in the maintenance of way department—the general factor used in the revenue train mile.

Q. Well, now what proportion do you allocate to passenger? You haven't given the figures?

A. I can't answer that question.

Q. Can't you give us any answer?

A. Our propositions are based upon the Pennsylvania lines east of Pittsburgh. Our assets are usually based upon the same thing.

Q. Then in point of fact, the Northern Central is an immense losing proposition or an immense gaining proposition. It isn't material. You use your general figures, just the same?

99 A. Oh, no. The local conditions on the Northern Central determine themselves by the factors which are used. These figures—the information you are asking for—of course, we can procure almost anything. It is a question of whether it is desirable or whether the time and expense will compare with the usefulness of the information.

Q. What I am trying to get at is to find out the condition of the Northern Central as a profit-making end of the Pennsylvania system. Of course, to ascertain whether you are losing money on that or whether you are making money, and whether your passenger business is profitable or unprofitable? Now, you have testified that your earnings are exceeded by your expenses?

A. Yes, sir.

Q. And there are factors, of course, that, even under these circumstances, may make the passenger business desirable, but what I want to know is what proportion of your expense on the Northern Central are you charging to travel?

A. Well, the same method that is pursued as to the division of expense between passenger and freight on the Northern Central is the same as is pursued on other parts of the system—that is, we are not applying to the Northern Central Railway Company something which is applicable to the main line of the Pennsylvania Railroad. We are just applying a system.

Q. Yes, sir?

A. And the system is just as applicable to the Northern Central as it is to the Pennsylvania Railroad Company. Now, I will answer your question, if you please, a little further, in connection with the Baltimore Division. I should like to give you some relative figures. In 1908, when this same basis was in effect, the passenger operating ratio was 105.7 per cent.

Q. In 1908?

A. In 1908. Now that has raised to 109.62 per cent, showing an increase in that passenger operating ratio.

100 Q. Well, taking that as being true, can you explain why the Pennsylvania Railroad should enter into a lease since that ratio of increase began to climb in which they granted 11.2 per cent dividend?

A. The lease on the Pennsylvania Railroad Company was effective January 1, 1911. The fact—

Q. The lease was made in 1910, was it not?

A. 1910, first, but I think that dates of January, 1911. That fact should be borne in mind in considering the circumstances. I don't know whether that would be made today or not.

Q. Now, in point of fact, it was not signed until this last July, was it?

A. Oh, I don't know when it was signed. I know that the litigation was considerable and the proposition didn't go into full force and effect until the first of July of this year.

Q. What was the ratio of passenger expense in the year 1905?

A. On the Northern Central?

Q. On this main line?

A. You mean the Baltimore Division?

Q. Baltimore Division?

A. The passenger in 1909 was—

Q. (Interrupting) 1905?

A. I don't know.

Q. 1906?

A. I don't know.
Q. 1907?
A. I don't know.
101 Q. 1908?
A. 105.70 per cent.
Q. 1909?
A. 103.32 per cent.
Q. 1910?
A. 121 per cent.
Q. 1911?
A. 124 per cent.
Q. 1912?
A. 107 per cent.
Q. 1913?
A. 109 $\frac{1}{2}$ per cent.
Q. 1914, you have that figure?
A. No.

(Mr. Bickel:) 1914 is not yet completed in our accounts, Mr. Bowie. The Interstate Commerce Commission accounting year ends June 30, but the accounting from which this is based is the corporate year which is the calendar year.

(Mr. Bowie:)

Q. Now the lease was entered into when?
A. I think it was January 1, 1911.
Q. So it was prepared in 1910?
A. Yes.
Q. In that year the operating expenses to receipts and passenger travel was 121 per cent?
A. Well, that has no effect upon the lease.

102 Q. It has not?
A. No, sir. You are dealing with one separate division of the Northern Central Railway Company, and one class of its business, and not the Northern Central Railway as an entire proposition.

Q. Well, I am trying to get down to segregating the passenger end, and I am taking your figures, sir. You gave us that information?

A. I know, but you are trying to get me to say that the line was based upon the Baltimore Division figures, which I wouldn't of course admit.

Q. You do admit, however, that at the time the lease was entered into, the ratio of expense was higher than it has ever been before?

A. No, sir, I don't admit that. I admit that the passenger business was a loss to the Northern Central Railway Company; every year a loss.

Q. And in 1910 and 1911, at the time this lease was being negotiated, were the two highest years?

A. So far; yes sir.

Q. The two highest years so far. Then the passenger business apparently doesn't play any important part in the receipts at all, does it?

A. Well, it is part of the pot. It means \$1,200,000 on the Baltimore Division.

Q. Now, will you give us the ratio on your freight rates of your operating expenses, too?

A. Baltimore Division?

Q. Baltimore Division?

A. I don't know whether I have that or not. Yes, sir.

103 Q. What has been the ratio of passenger—of freight receipts for expenses in the year 1908?

A. On what?

Q. On the Baltimore Division?

A. The ratio was 89, almost 90 per cent.

Q. That's in 1908. 1909?

A. 86 per cent.

Q. 1910?

A. 96 per cent.

Q. 1911?

A. 106 per cent.

Q. 1912?

A. 105 per cent.

Q. 1913?

A. 106 per cent.

Q. Taking the year 1909, your gross receipts for the Baltimore Division were what?

A. The gross receipts?

Q. Yes?

A. About \$5,000,000.

Q. And the expenses?

A. No; I beg your pardon. I haven't the gross receipts.

Q. That's the net receipts?

104 A. No; I haven't the gross receipts. I have given you the gross receipts from freight business and the receipts from passenger business. Now, I haven't the gross receipts of the Baltimore Division.

(Mr. Bickel:) I think what Mr. Bowie wants is the gross receipts from the freight business?

(The Witness:) Oh, I beg your pardon. The gross receipts, \$3,770,000.

(Mr. Bowie:)

Q. In 1912 they were what?

A. \$3,500,000.

Q. In 1911?

A. \$3,464,000.

Q. In 1910?

A. \$3,600,000.

Q. 1909?

A. \$3,800,000.

Q. Now, have you tabulated there your total gross receipts?

A. I have not.

Q. Those figures you just gave me are your freight receipts only?

A. The figures I have given you are the freight receipts only.

Q. Now the total expenses for those years have been what?

A. 1908, \$2,988,000; 1909, \$3,286,000; 1910, \$3,476,000; 1911, \$3,666,000; 1912, \$3,693,000; 1913, \$4,018,000.

Q. Those figures include freight expenses only?

A. Freight expenses and taxes.

Q. Now take—if I understand your figures in 19—what were your receipts in 1908?

105 A. Freight, \$3,325,000.

Q. And your expenses?

A. \$2,988,000 freight.

Q. In 1909 your receipts were \$3,800,000. Your expenses, \$3,286,000. In 1910, \$3,600,000 receipts, and expenses, \$3,400,000?

A. Right. Four hundred and seventy-six.

Q. Four hundred and seventy-six. In 1911 the receipts were \$3,464,000, and your expenses exceeded that, \$3,666,000?

A. That's right.

Q. And there was an excess in the next year, 1912, as well, \$3,500,000 against \$3,693,000?

A. That's right.

Q. The same is true in 1913?

A. That's right.

Q. So you have been losing money on the Northern Central for the last three years?

A. No, sir; I didn't say that.

Q. Won't you explain that?

A. The figures I have given you are simply the Baltimore Division, between Baltimore and Harrisburg, and do not include the more profitable portions of the Northern Central system north of Harrisburg.

Q. So you are losing money on the Baltimore Division, then?

A. I wouldn't say so, because I haven't the gross figures.

(Mr. Bickel:) Just say what the gross would include?

(The Witness:) The figures that you have are the freight earnings and the freight expenses and the passenger earnings and 106 the passenger expenses. They don't include any earnings from mail, any earnings from express, or any other incidental earnings, which we might add.

Q. Can you give us the gross earnings of the Northern Central?

A. The entire Northern Central?

Q. No, the Baltimore Division?

A. No, I haven't those figures. They can be furnished, but I haven't them.

(Mr. Bickel:) We will be glad to furnish those, Mr. Bowie, if the Commission thinks they have relevancy.

(Mr. Bowie:) I think it is a most relevant thing. Here is a railroad company coming in and asking to raise its rates, and they have demonstrated that they have leased the road and paid an actual dividend of twice ordinary commercial revenue, to wit, 11.2 per cent dividends, and they come before you now and are unable to furnish figures indicating their receipts and disbursements.

(Mr. Bickel:) On that particular division.

(Mr. Bowie:) It is the particular division with which we are concerned. It is the particular division over which this Commission has exclusive jurisdiction, and I think it would be going outside if we attempted to go into their earnings and receipts for the entire system. It is this particular division that we are interested in.

(The Chairman:) He has offered to furnish it.

(The Witness:) We will furnish anything.

(Mr. Bowie:) Well, I want it distinctly understood—

(The Chairman:) We think it is relevant, all right, and they will furnish it.

(Mr. Bikel:) We will furnish it.

107 Q. Now, take the Northern Central system then, for a moment, what does—you have granted 8 per cent dividends on its present capital, which is 40 per cent stock dividends, or in other terms, watered. Will you please tell us what your net earnings are on that system?

A. Just a moment. The indications were it was not watered, Mr. Bowie. I did not answer the question on that basis.

Q. I don't mean to put it that way. Its surplus earnings, on your own figures, and it isn't necessary at this time to go into whether it is purely fictitious or whether it is actual?

A. That's what I thought.

Q. You give a dividend of 8 per cent on its present capitalization?

A. Yes.

Q. And won't you tell us what the earnings of the Pennsylvania Railroad have been on that?

A. On what?

Q. The Northern Central?

A. Since the time of the lease?

Q. Since the lease?

A. That's since July 1 it has been operative.

Q. You went back, did you not?

A. Yes.

(Mr. Bickel:) He means for January, 1911. You have that year?

(The Witness:) 1911?

(Mr. Bowie:) Yes, sir.

108 A. Well, there were some such figures prepared, I think, but I didn't prepare them. I can tell you what the receipts of the Northern Central Railway were last year and you can draw your deductions from that. The Northern Central Railroad had a net income for the year 1912 of \$1,700,000, out of which it was necessary to pay dividends and sinking funds amounting to \$80,000. The dividends, etc., amounting to \$2,166,000, indicate that the Pennsylvania Railroad, so far as figures are concerned, lost money last year on the proposition.

Q. How much was that?

A. \$2,166,000, but there are other things to be considered besides the mere return of the income account.

Q. What are these other things?

A. The value of the Northern Central Railway Company to the Pennsylvania as a feeder, and its value as a part of the system. We hope, however, that this condition, as existing on the Northern Central, is a condition which exists on most of the railroad companies, and that's the reason we are before the Commission for an increase in rates.

Q. Now, in the year 1912, what was your net income?

A. I haven't that for 1912.

Q. Have you any other figures prior—

A. (Interrupting.) No, very unfortunately I intended to bring them all, but I didn't. I have 1913.

Q. Well, it would be very easy, I presume, for you to furnish these?

(Mr. Bickle:) Oh, yes, we will be glad to do that. Just let me understand what that was. All of the earnings on the Northern Central for the last six years?

(The Witness:) The net income.

(Mr. Bickle:) We will get that. I will try to have that to-day.

109 (The Witness:) Just a moment.

(Mr. Donaldson:) These returns are made every year to this Commission. They are on file in the office of this Commission.

(Mr. Bowie:) I thought the witness had them on hand and tabulated. That is the only thing. As a rule, these returns take an expert to figure out the tables of them, that is all, sir.

(The Witness:) Now I can give you those figures on the June 30th year basis, but not for a calendar year basis.

(Mr. Bowie:) That's all right, sir.

(The Witness:) The net income of the Northern Central for the June 30th year, 1911, was \$1,841,000; 1912, \$1,696,000; 1913, \$2,041,000; 1914, \$1,121,000. Now in giving these figures, I want to also call attention to the year 1910, which was \$2,831,000, and the year 1909, \$2,444,000; 1908 was \$2,663,000; 1907, \$2,841,000, more than sufficient to pay this return of 8 per cent on increased stock. Will that meet your question?

(Mr. Bowie:)

Q. Yes, thank you. So ever since the lease has been a losing proposition, that is on the money end of it?

A. Well, yes, sir, in dollars and cents, that might be the proposition. There are other factors that have to do with it. I have pointed out the year 1910, in which they made a great deal more than the dividend called for. 1910 was the first year that the railroad companies made their application to the Commission for an increase in rates, and that general condition will be found in most all the railroad companies, that is, the decline and return.

Q. What is charged against the gross income on the Northern Central Railroad. What is, on your books. Your gross income includes your passenger, freight, express, mail, and what other?

A. Other incidental items. I will give them to you. They are rather lumped here. Freight revenue, the passenger revenue, mail revenue, the express revenue, what we know as other transportation revenue, which I can describe if you want, I am just giving 110 the general headings which the Commission requires, new revenues in operations other than transportation, and the outside operations.

Q. Now against that what do you charge?

A. We charge the operating expense to reach that figure.

Q. To reach your net revenue?

A. Net revenue, or net operating income, or net income.

Q. Your net income?

A. Your net income, all right. You want me to build that up?

Q. Yes, sir?

A. All right, sir. First start off with our operating revenue total, then we have the total operating expenses, then we arrive at what we call the net operating revenue, which is a difference between the two, from the net operating revenue we deduct the taxes and we add any amounts which might be received from joint facility returns, or miscellaneous returns of any kind, then we deduct from that particular amount the wear of equipment, joint facilities, and the miscellaneous returns, then we have arrived at what we call the net operating income, and to that operating income we add the other income consisting of dividends on stock, bonds, and the interest that might be, from which we deduct the interest and funded debt and miscellaneous reductions we may have and arrive at the net corporate income. The net corporate income is the amount before the deduction of dividends or sinking funds.

Q. Now, under your lease, you take over certain equipment of the Northern Central, do you not?

A. I believe we do, yes.

Q. And of course depots and terminal facilities as well?

A. Yes.

111 Q. Take this as typical. The Union depot in Baltimore. Is the reconstruction of that charged to the Northern Central? The new depot, the present depot?

A. The reconstruction of it?

Q. The construction of it; yes, sir?

A. I think it was. I am not sure about that, though. That is what we call detail. That is one of the thousand details. I don't recall.

Q. Have you any idea of what that cost?

A. No, sir.

Q. What rental does the Pennsylvania Railroad pay for the use of that?

A. The Pennsylvania Railroad doesn't run in there. The Philadelphia, Baltimore and Washington pays upon the basis of the use, as I understand it.

Q. Can you give us the figures of that?

A. I haven't the figures. That's another detail. We can furnish

it if you want it. There are thousands of details, of course, which can't be carried along as a memorandum.

Q. Here is another detail which may be you can explain. Can you tell me what the cost of that four-track road from Waco Junction to Marysville cost?

A. No, I don't recall the figures.

Q. Where did you get the money to build that, do you know?

A. No.

Q. Isn't it a fact that Northern Central money was furnished for that?

A. I don't know.

Q. Who would know?

112 A. I can ascertain it. That comes within my provision.

Q. Didn't it come to a number of million dollars, as a matter of fact?

A. It was an expensive proposition, of course. Just how many dollars it cost, I don't know.

Q. Well, as a matter of fact, didn't the Northern Central money build that, and that you are paying 4 per cent for it?

A. I don't know.

Q. Who would know?

A. I would know. I can ascertain the fact. That's one of the thousand other details that we don't carry around with us.

Q. It is a pretty important detail in this case, and we would like to have it.

A. If we had known that in advance, we would have had all that information for you.

Q. I assume you will be able to tell us all about the statistics of the railroad?

(Mr. Bickle:) We can't go into the full principle of everything we ever did.

(The Witness:) We have thousands of transactions on our books, and it is an impossibility to carry those on your mind.

Q. Now, will you tell us the gross earnings from package stamps on the main line of the Northern Central for the months of September, October and November, 1913?

A. We can furnish that.

Q. And a similar statement for the year 1914?

(Mr. Bickle:) Just let's get that.

(Mr. Bowie:) The package earnings for the year 1913 as of September, October and November. Those three months.

113 (Mr. Bickel:) And the corresponding months for 1914?

(Mr. Bowie:) Yes.

(Mr. Latrobe:) Just one minute. I don't know how you segregate that. They sell package stamps at Union and Calvert to points on the P., B. & W. and also on the Northern Central. I don't think they keep them separate.

(Mr. Donaldson:) What has it to do with passenger rates?

(Mr. Bickle:) We will be very glad to furnish it to you.

(Mr. Bowie:) If you can segregate it we would like to have it?

(Mr. Latrobe:) Another thing. A man buys twenty or thirty tickets, and he may go out on the Northern Central, and he may go out on the P., B. & W.

(Mr. Bickle:) We will be very glad to get what we have got.

(Mr. Bowie:) How many buy those tickets that way?

(Mr. Bickle:) We will find out just how that's done. We will get the best we can on that.

Q. Now, taking the year 1913, your net income, you saw, was \$2,004,000?

A. What are you speaking of now?

Q. The net income.

A. What net income? For what year?

Q. The year 1913.

A. Calendar year?

Q. No; it was your Interstate Commerce year?

A. No; I said \$1,721,000.

114 Q. I thought that was '14?

A. That's '14. '13 was \$2,041,000.

Q. Now tell us just what is charged against that. You have given us the general items. I want to know how you allocated your charges as between the passenger and freight departments for that year? What are the operating expenses, the maintenance of way—we will take first what was the charge against the freight earnings. What proportion of the charges and maintenance of way was made against freight earnings?

A. I can't give you that figure.

(Mr. Bickle:) We can get that.

(The Witness:) We can get all those things.

(Mr. Bowie:) I want to get the details of this important condition that you are losing money on the Northern Central?

(Br. Bickle:) Oh, no. We said we are losing money on the Baltimore Division.

Q. What did you make on the Northern Central as a whole last year, the net income. Did you make any money on it, the Pennsylvania Railroad?

A. The proposition shows that we lost.

Q. You lost last year?

A. 1913; yes.

Q. And you lost approximately every year for the last five years, with the exception of one?

A. Well, except 1910. Prior to that, however, the amount was more than sufficient, and that was the year 1910, in which the lease was made. I also stated that I didn't know whether the lease would be made today or not.

Q. Certainly not. No one can tell.

115 A. These conditions might change it.

Q. What I would like you to tell us, please, is what proportion of your through haul of freight is allowed to the Northern

Central on freight originating west of Pittsburgh and coming over your Pennsylvania line from Pittsburgh to Harrisburg?

A. What particular kind of freight?

Q. Take iron or coal?

A. Coming from west of Pittsburgh?

Q. Coming from Pittsburgh or west of there?

A. No coal comes from Pittsburgh down this way.

Q. None comes at all?

A. Not from Pittsburgh.

Q. Iron comes, does it not, or steel?

A. Yes.

Q. What proportion of the through haul?

A. We will have to get that for you. We have about 50 operating divisions, and to carry those divisions, 50 operating divisions, in our mind, is a physical impossibility. We make reports to 125 Commissions which contain thousands of details. You, of course, understand the impossibility of carrying those details in your mind.

Q. Now, can you tell us, then, upon what—what is the estimated earnings of the Northern Central at the time the Pennsylvania entered into this lease?

A. I have given you 1910.

Q. No; I mean was that the estimate you figured on when you made the lease?

116 A. I didn't figure on it at all.

Q. You did not. How much of the stock of the Northern Central, at the time the lease was entered into, did the Pennsylvania Railroad own?

A. I think it was 74 per cent. Just a minute. Oh, I don't know at the time of the lease, but I don't think there was any change from that time up to December 31, and on December 31 the Pennsylvania lines east of Pittsburgh owned 54.68 per cent.

Q. Now, take your passenger trains. You charge up to the passenger department the salary of that crew, do you not?

A. We do.

Q. Now, if that train, under the decision of the Court of Appeals of Maryland, is sidetracked for a through express train, is there any credit given to the local passenger department for the time that is lost by reason of the through traffic?

A. Oh, I haven't said that we divided the passenger expense between the through train and the local train. I said we divided the expenses between passenger and freight.

Q. How do you arrive at your difference of your earnings per train mile unless you divide your expenses?

A. I haven't given any comparison per train mile through local business. My figures were gross earnings.

Q. They were gross earnings?

A. Yes, sir.

Q. And you can't give us any net earnings?

A. No, sir. Only in the aggregate of all the passenger business. We haven't reached that refinement of accounting yet. I have made special studies in that line, but not out of Baltimore.

Q. Well, is there anyone that can testify as to what your net earnings in the passenger business are?

117 A. I don't know of anyone. I would if there was anybody like that, but I didn't—

(Mr. Bickle) (interrupting): You mean by that—

(Mr. Bowie) (interrupting): On a particular train.

(The Witness:) In your mind?

(Mr. Bowie:) On a particular train on your suburban service?

(Mr. Bickle:) Mr. Fell has testified to the net on the division, and I wanted to be sure as to your—

(Mr. Bowie) (interrupting): He has testified as to the net income, but these figures are too general. What I want to find out is just what factors enter into the arriving at your net income from passenger service?

(The Witness:) You are speaking now of the Baltimore Division as an entirety?

(Mr. Bowie:) As an entirety?

(The Witness:) Yes, sir.

Q. Well, you start out with your gross income, being the total receipts from suburban traffic, and you have no compilation of figures to show what you charged against that?

A. We have no compilation, and make no study into the cost of suburban business out of Baltimore.

Q. Then you can't say whether you are making or losing money, can you?

A. No; but it is a matter of very clear deduction that 50 cents per train mile isn't a paying proposition. That train has to be stopped a great many times, that local train, and it costs considerable money to stop a train. It has been estimated that it costs—I have seen various estimates—one of our own estimates was 20 cents. I

118 have seen estimates from scientific men that say it costs anywhere from 30 to 60 cents, with 40 cents for an average, and several things of that kind. The stopping of that train would cost us a great deal of money. Now, that's something that enters into the cost of suburban business, but I am not prepared to say that the suburban business in the Baltimore district costs more or costs less than the other service, because I make no study of it, but relatively, when you compare a 55-cent earning on a local train with \$1.53 on a through train with a loss on the entire division, the natural inference is that the other business on a general average don't pay, that 55 cents is so far from the general average earnings that it must be a losing proposition.

Q. On your through trains, what proportion of receipts are occupied?

A. I have figures. No; I haven't anything on the Baltimore Division—that is, the use of the potential passenger trains that you refer to. No; I haven't anything on the Baltimore Division. I have them for Philadelphia, but nothing on Baltimore.

Q. Generally, what is your proposition?

A. Oh, it varies. Some of the runs get down to 17 per cent and some as high as pretty near 53 per cent.

Q. On suburban traffic, how does that run?

A. Well, that runs on through trains just about 42 per cent, and some of the commutation trains are just about 25 per cent.

Q. You have no suggestion as to Baltimore?

A. No.

Q. Can you supply those?

A. Well, we would have to make a special study to do that.

(Mr. Bickel:) Just explain what you mean by that.

(The Witness:) What we would have to do in those cases—what we did—was to get the conductor to make a full and complete report of every ticket collected and every ticket which was honored and not lifted in the trains in which it was honored and not lifted, and the kind of ticket, and we made a complete study of it. Now, we would have to make special preparations for the study. I don't know of any in particular having been made out of Baltimore. These figures I have are out of Philadelphia.

Q. There have been figures compiled by your conductors to my personal knowledge within the past six months?

A. As to what?

Q. As to the number and kind of tickets on a train, number of tickets on it but not lifted?

A. Oh, well, of course, we have the earnings of the trains which I have given you, but we haven't attempted to apply that to the potential capacity and use of the trains.

Q. What I mean is this: The conductor would come through the trains a number of times with a brakeman or clerk with him, who would make a record as he punched my ticket. For example, he would say, 100-trip, Lutherville, or 100-trip, Ruxton, and all the tickets honored and lifted were recorded, and of course the tickets he lifted he had them. Now, where are those records?

A. I don't know. I don't know who ordered it.

Q. Who would know?

A. Well, I can find out. I can, of course, have access to all the records of the Pennsylvania Railroad to find out what that was. If you will give me the specific dates and times I will be pleased—

Q. (Interrupting.) Three times that has happened within the year 1914?

A. Upon what date?

Q. I haven't the slightest idea?

120 A. I can't do anything for you.

Q. Will you produce all of the records of that kind that you have on the Baltimore division?

(Mr. Bickel:) Let's see what that is.

(Mr. Bowie:) If it pleases the Commission, that is most important.

(The Chairman:) He says he will get it for you.

(Mr. Bowie:) He says if you will give us specific dates, he will give it.

(Mr. Bickel:) Just what do you want?

(Mr. Bowie:) I want your complete record of every check you

have made of the number and kind of tickets honored or lifted on the various trains on the main line of the Northern Central?

(Mr. Bickel:) Do you mean the Baltimore Division?

(Mr. Bowie:) To Parkton. Of course, I would like to have the Cockeysville trains and the Parkton trains and the various trains themselves.

(Mr. Bickle:) That's since January, 1914?

(The Chairman:) That run on the Parkton Division, you mean. You don't want the whole division?

(Mr. Bowie:) Oh, no.

(Mr. Bickel:) I will try to find out what those checks were. I don't know the purpose of those checks. They may have no relation to the question of the potential capacity of the trains. They may have been done for some other purpose, but whatever they are, I will let you know. We will try to get whatever we can. I will look into this.

(The Witness:) We are perfectly willing to furnish anything if it is possible to do it.

121 (Mr. Bowie:) I know, but you come here to testify and you haven't the essential records of this particular end of the road.

(The Witness:) Oh, no. That is not a fact.

(Mr. Bowie:) Oh, yes it is. You are not giving us the very data we need for this case.

(The Chairman:) Any other questions, Colonel?

(Mr. Bowie:) Yes, sir. If you will pardon me just a moment.

Q. What would be the increase in revenue on the Northern Central if the five per cent rate increase is allowed by the Interstate Commerce Commission?

A. Well, we can estimate that roughly. Why, I should say about a little less than \$500,000 based upon the freight revenue of nine million and seven.

Q. What would be the proposed increase in passenger rates?

A. Well, Mr. De Long gave you an estimate on that. I don't know.

Q. No, he didn't?

A. Well, I haven't made any estimate on it.

Q. Now, that's it then. Can you tell the Commission if you get the freight rate increase that the passenger increase will be necessary?

A. That is a matter that is not in my hands.

Q. You are the statistician of the Pennsylvania?

A. That is a matter of policy, not of statistics.

(Mr. Darnall:) Would you want it if you get the other?

A. We are in business for business purposes.

122 Q. We are dealing with statistics now. We would like to know if it would be necessary, in order for the railroad to make a fair earning on its capital investment, whether or not the increase of five per cent on your freight earnings will not give you a sufficient income to give your stockholders a fair return?

A. That's dealing with an uncertainty, not with facts.

Q. Didn't the railroads make that contention before the Interstate Commerce Commission?

A. Not that I know of, and I attended all the hearings.

Q. It was not contended that that would be sufficient?

A. No, sir. The contention was before the Commission—I think it was very clearly stated, especially by Mr. Delano, who represented certain fair sized roads, that five per cent was not sufficient for them, and it's been clearly indicated several times since by others, I think by Mr. Willard. I am no judge that five per cent was not sufficient.

Q. Would it be sufficient with the Pennsylvania?

A. Well, we are not on the verge of bankruptcy, but our surplus is rapidly depleting. From corporations such as the Pennsylvania system, which is a very immense plant—we shouldn't be tied down to a mere payment of a six per cent dividend without any surplus. That would jeopardize the credit of the railroad company.

Q. Where is that surplus of the Pennsylvania invested?

A. The Pennsylvania owns a great many stocks and bonds, it owns property, etc. It owns 54 per cent of the Northern Central Railway stock.

Q. That's a pretty good investment, isn't it?

A. What, the Northern Central Railway?

Q. Yes?

A. It pays an eight per cent dividend.

123 Q. It pays eleven per cent dividend on actual investment, I think. Now, have you any other stock that pays better?

A. Oh, we own a great many stocks, a long list of them.

Q. You will find them all published in the annual report.

Q. Have you any that pays better than the actual investment?

A. Well, I don't agree with you on your eleven per cent in the first place.

(Mr. Bickel:) I don't want to interrupt, but if the Commission please, isn't the Colonel going contrary to the subject when it isn't even involved in the Northern Central?

(The Chairman:) I was just going to say that myself.

(Mr. Bowie:) Your witness can only testify to the system as a whole and not as to the Northern Central.

(Mr. Bickel:) Oh, I don't think so. He has given a great deal about the Northern Central and what he hasn't we are willing to get so far as it is possible.

Q. What has been your increase in operating expenses in the past ten years on this branch?

A. The Baltimore division?

Q. Yes?

A. Well, I have given it to you since 1908. I haven't it prior to that. Well, I will give you that. Just a moment.

(Mr. Bickel:) In percentage he means.

(The Witness:) In percentage, well, I may be able to furnish that. Here, I have made a comparison of 1900 if you want it. Comparing the entire Northern Central Railway Company for the year 1900, or 1914, with the year 1900, we find the figures of .69 76/100 per

cent of the revenues, an increase of one hundred and seventeen per cent in the taxes and operating expenses. An increase 124 in the operating ratio from seventy-two and sixty-two hundredths per cent to ninety-two and ninety-seven hundredths per cent.

Q. That's the entire Northern Central system?

A. That's the Northern Central Railway.

Q. That's the net increase in operating over the revenue operating expenses over the revenue?

A. In money?

Q. Yes, or percentage, I mean?

A. Well, the earnings increased sixty-nine and seventy-six hundredths per cent and the expenses including taxes one hundred and seventeen per cent.

Q. What was the cause of that?

A. The causes were many, taxes—

Q. (Interrupting:) Does the same ratio of increase prevail last year?

A. Yes, sir. Practically over the entire system, and practically on all railroad systems, in official classification territory which I have examined, and I examined pretty near all of them in connection with the rate case, the five per cent case, a general increase in the number of cents out of the dollar to pay the operating expenses and the taxes.

Q. If the railroads had not declared this 40 per cent stock dividend, there would have been no difficulty in their paying an eight per cent dividend without showing a loss, would there?

A. What railroad? The Northern Central?

Q. The Northern Central, the Pennsylvania end of the Northern Central?

A. Well, the Pennsylvania Railroad gets over half of that back again. It owns 54 per cent of the stock. Therefore, to say 125 that we don't get any of it back—because we get over half of it back.

Q. But your earnings on that branch of it. If it had not been for the increase in stock that would have been sufficient to pay an eight per cent dividend without showing any loss?

A. Now, I don't know about that. We are rapidly reaching the point where that—we had \$1,721,000 over, and with the dividends at eight per cent on the old stock amounted to one million and six. That left us about \$75,000 for the June 30th year, 1914, but the stock dividend, as I have stated several times, was protected upon the period prior to 1910.

Q. I believe you testified as to the dividend the Pennsylvania Railroad itself has paid, have you not?

A. Yes.

Q. That's been six per cent, I think?

A. Six per cent. It now pays six per cent.

Q. And the Northern Central pays eight per cent?

A. Eight per cent.

Q. Now, what do you consider a fair dividend to be earned by a railroad?

A. Are you speaking of a dividend or a surplus or what?

Q. Dividends?

A. Payments to its stockholders?

Q. Yes?

A. The Pennsylvania Railroad dividend of six per cent is a very moderate dividend. It's paid six per cent for the last 36 years with the exception of a few years. I think three and a quarter per cent in 1907 they paid, but as a general rule, for the last 36 years it has paid six per cent dividends since 1847. The dividends have averaged six and one-hundredths per cent.

126 Q. And on the Northern Central since 1881 there has been an average dividend of nearly eight per cent?

A. Something like that.

Q. And you do not consider that sufficient revenue for the stockholders?

A. Whose stockholders?

Q. For the Northern Central or the Pennsylvania either one?

A. Well, eight per cent in 1914 is not the same as eight per cent in 1900.

Q. What do you mean by that?

A. I mean that the purchasing power of money is quite different today than it was in 1900.

Q. Oh, yes; we all know that, but we have lean years, do we not, in all things, and fat years?

A. We do.

Q. And this is a lean time for a man with a fixed income?

A. What particular period is lean?

Q. The present time when money buys so little?

A. Well, there isn't any prospect of it going down according to the statistics that I have, and according to the Department of Commerce.

Q. What dividend, then, do the railroads consider should be a fair one when you say six and eight per cent — or not?

A. I didn't say that. I would rather not say what dividend is fair. This is a question of opinion, a matter of opinion, the amount of the dividend and the amount of the surplus.

Q. The surplus of the Pennsylvania, at least, is variously invested, as you have testified?

127 A. Yes.

Q. And the Pennsylvania has been put to a very abnormal expense in the last few years with terminals, has it not?

A. They spent money in terminals; yes.

Q. An immense sum, have they not?

A. They have spent money in terminals.

Q. To what extent does the Baltimore Division contribute to the general terminal fund, particularly the New York terminal expense?

A. The Baltimore Division don't contribute anything to the New York terminal.

Q. No portion of the sinking fund?

A. There is no element of the revenues of the Northern Central Railway Company to take care of the terminal proposition. That is a Pennsylvania Railroad proposition.

Q. And no portion of the expense is charged, no portion of the income is divided, to that purpose?

A. No, sir. Well, I don't know that. Of course, the dividend from the stock might be, but I am speaking about the expense. There is no portion charged against the expense of the Northern Central Railway Company representative of any expense on the Pennsylvania. The only money which might be sent back would be a return on the Northern Central stock to the Pennsylvania Railroad and then disbursed in that manner.

Q. Do you keep the surplus earned, if any, on the Northern Central, separate in your accounts from that earned on other branches?

A. We have up to June 30th, 1914, and the company has made a separate annual report and has made separate annual reports to this Commission.

128 Q. Now, won't you tell me, please, what proportion you charged the Baltimore Division for the use of the cars and locomotives as compared with your other divisions?

A. On the same basis as every other division.

Q. Absolutely?

A. Yes, sir. As far as I know, they are. The passenger cars, the freight cars and locomotives are all on the basis.

Q. Do you charge the Baltimore Division the same for the use of a passenger car as you do the Pennsylvania on the Philadelphia Division?

A. Yes, sir.

Q. You don't take into regard the value of the equipment at all. Do you count a car a car, or do you take the value?

A. Well, the value figures in the pool; yes, sir.

Q. Well, then, do you charge the suburban traffic in Philadelphia, which has all-steel cars, which is higher, for the use of the cars than you do in Baltimore?

A. Well, I say it is based upon the valuation.

Q. What I would like to get at is: Is the charge per car actually higher on the Philadelphia Division, the suburban division in Philadelphia, than it is to the suburban division in Baltimore?

A. Well, the cars are all pooled and divided on a basis of the mileage made.

Q. Regardless of the car?

A. Yes. In other words, if the Northern Central Railway Company would get credit for its cars and its locomotives, if it owned—that means, the proposition—

Q. (Interrupting:) The repairs are charged to—

A. On a basis of the miles.

129 Q. Regardless again of the kind of equipment?

A. Well, I am not so sure about that.

Q. Don't you know?

A. No; I don't know.

Q. I believe you said that, notwithstanding the fact that you lose on the Northern Central Railroad, and the earnings of the Baltimore Division are in reality a loss, that there were other factors entering

into the question that made it desirable to retain, as a part of the Pennsylvania system. What are these factors you refer to?

A. Well, the factors are, as I stated, a part of the Pennsylvania system, and as part of the Pennsylvania system it, of course, may feed us with traffic on our lines.

Q. If the operation of it is unprofitable, what is the advantage to the Pennsylvania?

A. Well, I haven't said it was unprofitable.

Q. The figures you have given—

A. (Interrupting): Oh, I have said that as far as the figures are concerned, but if as many advantages are taken in connection with the figures, these advantages, of course, are an indeterminate thing in dollars and cents.

Q. Carrying that to its logical conclusion that a railroad may have a number of feeders that are unprofitable and still it would be desirable, wherein does the desirability come, because it would be losing money all the time. It would be a question of how many unprofitable feeders it would have as to how long it would live?

A. If it were a question of whether it would lose money or not—I have given you figures which show that in 1913 the net income was \$1,600,000. The Pennsylvania Railroad Company owns 54 130 per cent of the Northern Central stock, and in that way gets back almost \$1,000,000, over a million dollars, in dividends. Now, if you measure these up, it is a question as to whether it is a loss or not.

Q. Had the Interstate Commerce Commission granted you the five per cent freight increase, did you say it would have given you \$500,000 on the Baltimore Division?

(Mr. Bickle:) No; he said on the Northern Central.

Q. Northern Central, was it? I don't want to misquote you at all. Would it be necessary for you to ask for the passenger increase?

A. The Interstate Commerce Commission, following the policy laid down by the Interstate Commerce Commission, it would—in which they stated that each part of the service should bear a proportionate part.

Q. You have demonstrated, have you not, to the satisfaction of the Interstate Commerce Commission, that their conclusions were in part wrong?

A. Some of their suggestions we did not relish so much as we thought we might.

Q. Haven't you demonstrated to their satisfaction, haven't they authorized you to recede from some of the suggestions they made?

A. Well, you will have to specify just what you mean.

Q. As to spotting cars?

A. Spotting cars? That question, I understand, has not been finally determined. That is a subject for some future hearing, trap and ferry car business, and spotting car question is a question for future determination on which they still intend to hold hearings.

Q. What about the spotting?

131 A. That's what you mean, spotted cars.

Q. That's included in that?

A. Yes, sir; that entire question.

Q. How soon can you give us those figures that you have promised?

A. Well, which particular ones? I didn't keep any list. If you will give me a list of what you want we will expedite it all we can.

Q. The particular figures as to the segregation of passenger and freight?

(Mr. Bickle:) I have all those down.

(Mr. Bowie:) Well, how soon can you get those?

(Mr. Bickle:) That I will first have to find out. That is, I will get at it right away when I get away from here. As many as I can have made up tonight I will get. The rest I will have to tell you in the morning just how long it will take. Some of these I think I can get overnight.

(NOTE.)—No cross-examination.

(Examination concluded.)

(NOTE.)—The Commission here adjourned until 10 o'clock A. M. Friday, December 18th, 1914, when the case will be continued.

132 Before the Public Service Commission of Maryland.

Case No. 865.

RUXTON IMPROVEMENT ASSOCIATION and THE LUTHERVILLE IMPROVEMENT ASSOCIATION

vs.

THE PENNSYLVANIA RAILROAD COMPANY.

Friday, December 18th, 1914, at ten o'clock a. m.

Second Day.

ALEXANDRIA C. Woods, a witness of lawful age, produced on behalf of the complainants, having been duly sworn according to law, testified as follows:

Direct examination.

(By Mr. Bowie:)

Q. Mr. Woods, you live in Lutherville?

A. I am a resident of Lutherville.

133 Q. Where are you engaged in business?

A. In Baltimore.

Q. Do you ride on the Northern Central?

A. I do.

Q. How frequently?

A. I ride on the Northern Central practically every day, in and out, with some few exceptions.

Q. What kind of ticket do you use?

A. I am using the 100-trip ticket.

Q. Why do you use that 100-trip ticket?

A. I use that because I am out of the city usually one or two nights a month and because of the fact that I don't use it at all on holidays or on Sundays, and I find it a more economical form of commutation than the monthly ticket.

Q. You are familiar with the Northern Central Railroad Company from Baltimore to Parkton?

A. Reasonably so; yes, sir.

Q. What industries are located along there employing men, say from Mt. Washington?

A. Including Mt. Washington?

Q. Excluding Mt. Washington?

A. There is at Lutherville a cooperage, Wiseboro Cooperage Company.

Q. Do you know how many men are employed there?

A. I do not know definitely; I should suppose about eight, six or eight.

Q. North of that—

134 A. North of that there is nothing at Timonium nor at Padonia. At Texas there are one or two lime quarries there, right near Texas, and I think the Beaverdam Quarries Company. At Cockeysville there is the Melvale Distillery Company.

Q. You don't mean the Melvale, do you?

A. No, I don't mean the Melvale; it is the Sherwood Distillery Company. North of that I don't know of any of an industrial nature to Parkton.

Q. There are no industrial centers near the railroad that you know of, are there?

A. No, sir.

Q. You are pretty familiar with that territory?

A. Reasonably familiar with that territory.

(The Chairman:) The railroad has withdrawn this 100-trip ticket altogether; that would make you use a ticket that cost two and a quarter cents, or a monthly ticket?

(The Witness:) That would force me to use a monthly ticket.

(The Chairman:) Or the two and a quarter cent ticket?

(The Witness:) Yes, sir.

(The Chairman:) Suppose this 100-trip ticket was restored? At what price could it be wholesaled to you to meet the requirements of the people in the neighborhood?

(The Witness:) Well, personally, I would not object to an increase of fifty cents in the price of the 100-trip ticket.

(The Chairman:) Fifty cents on what?

135 (The Witness:) Fifty cents increase in the price of the 100-trip ticket. I understood the advance in the price of 60-trip ticket and monthly ticket as proposed under the new tariff was twenty-five cents, but under the proposed basis would increase the price of the 100-trip ticket fifty cents.

(The Chairman:) You think that's the only fair and proper way in which to put it?

(The Witness:) I think that's fair.

(The Chairman:) How about one and a half cents a mile?

(The Witness:) A cent and a half a mile—I would have to figure that out. The distance from Lutherville to Calvert Station is eleven miles—twenty-two miles a round trip.

Q. That would be \$15.75?

A. Yes, sir; with an increase of \$4.05. I would consider that an unfair increase, sir. That's practically a fifty per cent increase.

Cross-examination.

(By Mr. Bikle:)

Q. Am I right in understanding, Mr. Woods, that you think the increase of twenty-five cents on the monthly ticket is not an undue increase?

A. Personally, I don't object to that.

Redirect examination.

(By Mr. Bowie:)

Q. Do you have occasion to ride on the 1,000-mile ticket of the Pennsylvania Railroad Company?

A. Oh, yes. I use an interchangeable 1,000-mile ticket.

Q. What are the advantages of the 1,000-mile ticket over the 100-ride ticket? What's the difference between them?

A. Of course, the 1,000-mile ticket gives you the right to travel anywhere on the line of the Pennsylvania Road, and on the 136 straight \$20.00 ticket it is not restricted to the use of the holder, which the 100-trip ticket is. Then, again, the 100-trip ticket is, of course, only to be used between certain points.

(The Chairman:) What's the difference in the price?

(The Witness:) The 1,000-mile ticket is at present sold on a basis of two and a quarter cents; the 100-trip ticket from Lutherville costs us 11.7 cents a trip for a distance of eleven miles, which is one and about seventeen one-hundredths cents a mile.

Q. Then the 1,000-mile ticket is also useable between any station?

A. Yes, sir; any station whatever.

Q. The other is a straight commutation?

A. A straight commutation.

(Examination concluded.)

ELWOOD C. GAITHER, a witness of lawful age, produced on behalf of the complainants, having been duly sworn according to law, testified as follows:

Direct examination.

(By Mr. Bowie:)

Q. Where do you reside?

A. Lutherville.

Q. You are engaged in business where?

A. Here in Baltimore.

137 Q. Do you ride on the Northern Central?

A. Yes, sir.

Q. What ticket do you use?

A. I use the monthly ticket; this month I started in to use the monthly ticket, and the 100-trip ticket.

Q. Why do you do that?

A. The monthly ticket won't carry me out. I travel three and four times and probably five times extra a week.

Q. In other words, you make practically double the ordinary trips?

A. Double; yes, sir.

Q. And so you use the monthly and 100-trip ticket as well?

A. Yes, sir.

Q. If that 100-trip monthly ticket was withdrawn, you would have to buy—

A. A mileage book, or extra monthly ticket; other tickets which would meet our requirements or take the place of 100-trip tickets.

Cross-examination.

(By Mr. Bikle:)

Q. Have you considered the desirability of buying 180-trip quarterly tickets?

A. No, I haven't.

Q. You understand from that ticket, if you travel more than once a day it will give you the monthly rate. That ticket gives you 180 rides for any period not exceeding three months. Have you ever been acquainted with that ticket?

A. No, sir.

138 Redirect examination.

(By Mr. Bowie:)

Q. You ride an average of five days extra?

A. Yes, sir.

Q. That isn't a fixed number—

A. Yes, sir; four to five.

Q. If you bought a 180-ride ticket, that would be 180 rides in three months. Do you travel on Sundays?

A. Yes, sir; twice on Sunday.

Q. So you make on an average $30\frac{1}{2}$ round trips plus 4 to 5 a week, that would be 20—you make $50\frac{1}{2}$ round trips a month, as an average?

A. Yes, sir.

Recross-examination.

(By Mr. Bikle:)

Q. Do you think the increase of twenty-five cents in the monthly ticket is unreasonable, about a cent a day?

A. No, I do not.

(The Chairman:) Your real complaint is the withdrawal of the 100-trip ticket, as I understand it?

(The Witness:) Yes, sir.

(The Chairman:) Suppose that was restored at an increased price, at what price do you think would be reasonable?

(The Witness:) Well, I should think it should be increased according to the monthly ticket. The increase of twenty-five cents—it would be increased about fifty cents on the 100 trip ticket which would bring it about twelve—it is \$11.70 now, that would make it somewhere nearer \$12.00 or \$13.00.

(The Chairman:) You think the increase, as I gather it—you say that the 100-trip ticket should be restored with a percentage 139 of increase, it ought to be increased like the monthly ticket, per month, are increased, the 60-trip tickets?

(The Witness:) Yes, sir.

(The Chairman:) Well, the mileage has been increased to a quarter — a cent a mile.

(The Witness:) I think the ticket should be increased, just about fifty cents on the 100-trip ticket. That would be sufficient. If you raise it any further than that, the people won't want to buy it. In other words, they would use other means—other tickets.

(The Chairman:) What other tickets would they use? Mileage costs two and a quarter; straight fare costs two and a half; round trip costs two and a half.

(Mr. Bowie:) Obviously, they would have to buy one of these.

(The Witness:) Would have to buy another monthly ticket. That's the only come-back, or a mileage book.

Q. Your statement, that you think — fifty cent increase is fair, you don't know whether the railroad needs the increase or not?

A. I do not.

(The Chairman:) We understand that.

(Mr. Bowie:) It is on the assumption that an increase is necessary.

(Examination concluded.)

140 JASPER M. BERRY, a witness of lawful age, produced on behalf of the complainants, having been duly sworn according to law, testified as follows:

Direct examination.

(By Mr. Bowie:)

Q. Mr. Berry, you live in Lutherville?

A. I do.

Q. Where are you engaged in business?

A. Baltimore.

Q. How frequently do you come to Baltimore?

A. Most every day.

Q. What class of ticket do you use?

A. Usually the 100-trip ticket.

Q. Why do you use that?

A. Because I think it is the cheapest ticket to use. In other words, I go away from town for a day or longer and I find I don't use over about 48 to 50 trips a month.

Q. You have used the monthly ticket?

A. Yes, I have a monthly ticket this month.

Q. You only use about forty-eight or fifty trips of that?

A. Never over that.

Q. You are familiar with the Northern Central along the line between here and Parkton?

A. I am.

Q. You heard the testimony as to the industrial centers; have you anything to add regarding that?

A. I think he covered it about all.

141 Cross-examination.

(By Mr. Bikle:)

Q. I just ask you, if the Commission should think the railroad is fairly entitled to a little more revenue on the passenger business, would you regard twenty-five cents increase unreasonable?

A. No, I would not.

Q. If you only use 48 or 50 trips a month, your monthly ticket lasts just about two months?

A. Just about.

Q. Then, if the monthly trip ticket were sold on the basis of double—two monthly books would see you through just as well, and give you a few additional trips?

A. That's true, but if I was sick and laid up then I would win out on the 100-trip ticket.

(Mr. Bowie:) Or if you happened to be away at the first of the month—

(The Witness:) Yes, sir.

(The Chairman:) You want the 100-trip ticket restored?

(The Witness:) I do.

(The Chairman:) Do you think there could be any increase over the old price, assuming that the road needs an increase?

(The Witness:) Yes, sir.

(The Chairman:) What do you think would be reasonable?

(The Witness:) I am like the rest, about double the monthly ticket.

(Examination concluded.)

142 J. P. FRANTZ, a witness of lawful age, produced on behalf of the complainants, having been duly sworn according to law, testified as follows:

Direct examination.

(By Mr. Bowie:)

Q. You are also a resident of Lutherville and you travel on the Northern Central?

A. Yes, sir.

Q. Are you engaged in business?

A. Yes, sir.

Q. In Baltimore?

A. Yes, sir.

Q. What ticket do you use on the road?

A. I use the 100-trip ticket.

Q. Why do you use that?

A. I have tried the monthly ticket and did use it for some time, but I found the other suited my purposes better. Sometimes I am out of town and through the summer I don't come to town as a rule on Saturday.

Q. And in using the 100-trip ticket you found you were saving money?

A. I did.

Q. How long does the monthly ticket last you as an average?

A. Well, it lasts me I suppose a month and a half—not quite. A few days over a month is the rule unless I am ill or something of that kind. Then, of course, it lasts a little longer.

143 Q. The 100-trip ticket you have, you use it in a month and a half?

A. Yes, sir; about that—I meant to say over two months.

Q. Two months?

A. Yes, sir; two months and a half.

Q. That's an average?

A. That's about the average; yes, sir.

Q. You are familiar with the Northern Central—you have heard the testimony, have you not, as to industrial conditions?

A. I haven't heard any testimony; I just came in.

Q. What industrial centers and businesses are located along the Northern Central, after you leave Mt. Washington?

A. I wouldn't consider there were any industrial centers at all.

Q. Any business in which a man can obtain employment if they can't afford to ride on the railroad?

A. Well, there is the cooperage factory at Lutherville, which employs five or six men; there is the distillery at Cockeysville, and the Beaverdam Quarry. That's all I know of.

Cross-examination.

(By Mr. Bikle:)

Q. If the railroad is entitled to a little more revenue on the passenger business do you think that twenty-five cents a month on the monthly ticket is unreasonable?

A. I don't consider they are entitled to it.

Q. I know, but assume that this Commission should think otherwise?

144 A. I would hate to pay it in view of the fact that we have already increased tickets—stamp tickets—I was going to say I am opposed to it because we already had additional charges made against us through the stamp ticket. Formerly, we had all pack-

ages sent out free—all marketing sent out free—and then the packages were taken away and here lately a stamp is put on all marketing which increases our living expenses at least \$20.00 a year, if not more.

Q. So, even though the railroad may be justified in asking a little more revenue on passenger business, you don't think you should pay twenty-five cents on the monthly ticket?

A. No, I don't.

(The Chairman:) Do you think the 100-trip ticket at one cent a mile, the price charged on that class of ticket, is relatively fair on the price the railroad charges on other classes of users?

(The Witness:) I do.

(The Chairman:) You think that two cents a mile for the 1,000 mile ticket and one cent a mile for the 100-trip ticket are relatively fair between the classes of users?

(The Witness:) I do; yes, sir.

(The Chairman:) Why?

(The Witness:) Well, the 100-trip ticket is limited between a man's residence and Baltimore—he buys it between two points. The 1,000 mile ticket is good anywhere over the Pennsylvania system east of Pittsburgh and in that way when you are called away on business you use that 1,000 mile ticket in place of buying an excursion ticket.

(The Chairman:) What's the difference between an excursion ticket and mileage?

(The Witness:) I don't know; I can't tell you.

(The Chairman:) I didn't mean to ask you in that way; a round trip ticket from Lutherville to Baltimore is two cents and 145 a quarter—proposed under this new tariff; the old tariff was two cents and 100-trip ticket one cent, in round numbers. Now, they increased the round trip two and a quarter cents and the mileage to two and a half, and still keep the 100-trip ticket, but would you *keep* the price relatively fair?

(The Witness:) I think the price is fair.

(The Chairman:) You think it would be fair to the other classes of users of the road to raise all their fares for transportation and let the 100-trip ticket stay where it is?

(The Witness:) No, I don't think the other classes of tickets should be raised.

(The Chairman:) You do not?

(The Witness:) No.

(The Chairman:) If they raise one, would you let this stay where it is?

(The Witness:) Of course, as a user of the 100-trip ticket I would rather have a one cent rate.

(The Chairman:) The mileage has already been raised by the Interstate Commerce Commission to two and a quarter cents.

(The Witness:) Yes, sir.

(The Chairman:) Do you think a cent then for this 100-trip ticket is relatively fair compared to that?

(The Witness:) I do.

(The Chairman:) Now, a round trip—you said the distinction between a 100-trip and a 1,000 mile is the 100-trip travel between two distant points. The round trip is there.

(The Witness:) Yes, sir.

(The Chairman:) If that is a cent and a quarter what do you think the 100-trip ticket should be between the same two points?

146 (The Witness:) I still fail to see any reason for the increase.

(The Chairman:) I mean, relatively fair to the classes of users that have to buy a round trip ticket, or would you discriminate between classes?

(NOTE.)—The witness here made no answer.

Redirect examination.

(By Mr. Bowie:)

Q. Isn't your opinion as to the 100-trip ticket being sold at much less than the excursion ticket due to the fact that the man why buys a 100-trip ticket is a constant feeder of the road as against an occasional user?

A. Yes, sir.

Q. Do you consider the effect of a man buying his rides in bulk—would you take that into consideration as well?

A. Yes. He lays out a lump sum of money at one time.

Q. One other question—on the 100-ride ticket you have to pay the same fare whether you ride to Union Station or Calvert?

A. You do.

Q. What's the distance from Calvert to Union?

A. I don't know the actual distance; I haven't figured it—ten miles—

Q. No, from Calvert to Union?

A. I don't know what they charge on mileage for that.

Q. Something over a mile, is it not?

A. Yes. I think there is a constructive distance. I think they take more mileage from Calvert than they do from Union.

Q. They don't make any allowance on the 100-trip ticket though you could ride to Union?

147 A. Not a bit.

(Examination concluded.)

WILLIAM L. WILSON, a witness of lawful age, produced on behalf of the complainants, having been duly sworn according to law, testified as follows:

Direct examination.

(By Mr. Bowie:)

Q. Mr. Wilson, where do you live?

A. Ruxton.

Q. Where engaged in business?

A. Baltimore.

Q. How frequently do you come to Baltimore?

A. Daily.

Q. Use the Northern Central?

A. Yes, sir.

Q. What kind of ticket do you buy?

A. 100-trip.

Q. Why?

A. Because I can't use more than 45 or 50—never have used 50 in a month.

Q. Never used more than 50 trips?

A. I don't believe so—not when I was using it.

Q. You are the head of an electric concern, the Wilson-Maltman Electric Company?

148 A. Yes, sir.

Q. And your business brings you in practically every day?

A. Yes, sir.

Q. Mr. Wilson, are you familiar with the industrial conditions along the Northern Central?

A. Reasonably so.

Q. Have you heard the testimony of the previous witnesses as to those conditions?

A. The last two or three; yes, sir.

Q. That would substantially cover the situation?

A. Yes, sir.

Q. Do you know of any others?

A. No, I can't think of any others.

Q. Mr. Wilson, have you ever had a 1,000 mile ticket?

A. Yes, sir.

Q. Will you explain to the Commission just the difference between the two tickets—your viewpoint first?

A. They are entirely different services. The 100-trip ticket—you are a commuter—that means you live on the line; you get your marketing sent out on the line—your coal, or everything you use. Your servants go in and out on the line and your family goes in and out on the line. You are a daily user of the service of the railroad which the company gives you both passenger and marketing. On the 1,000 mile ticket you are an occasional customer. You are not regular every day in the month.

(The Chairman:) You are a daily user—would you use a monthly ticket?

(The Witness:) No.

149 (The Chairman:) Why?

(The Witness:) Because I can't use the 60 rides, but I am trying to distinguish between the commuter's tick which increases double the monthly and the 100-ride and the mileage book which is entirely a different service.

(The Chairman:) If the other fares are raised, assuming the Company needs it, would you raise the price of that ticket?

(The Witness:) I don't think it should be raised at all.

(The Chairman:) If the others are raised, you think the others should remain—

(The Witness:) What do you mean by the others?

(The Chairman:) The round trips—the commuters.

(The Witness:) If the mileage is raised—I would put the mileage in a class on one side and the straight fare on one side. Round trip and mileage is an occasional; it's the unlimited telephone against the \$2.00 a month telephone. You are a regular customer when you pay \$2.00 a month telephone which corresponds to the commutation ticket, and I have made no mention of the 10-trip ticket. Those are the \$2.00 a month telephone, while the straight fare ticket and a round trip ticket and the mileage book are the pay-station telephone. They are not regular users. The people that use these tickets don't have to pay freight—don't have to pay on their marketing nor servants nor any family and are only occasional customers, but if the railroads relied on other business entirely they couldn't run any commutation trains at all.

Q. Now, you speak of the servants and family using it; is there at Ruxton a family ticket sold that you know of?

A. I think there is a family ticket, but I have never seen it. We use the strip of tickets.

Q. Who uses these?

A. My wife and servants.

150 Q. Your servants go into town frequently?

A. Once a week.

Q. One of the provisos out there, is it not, you have to supply the house servants with the ticket?

A. Yes, sir, can't get them unless you agree to it.

Q. So you do supply your servants with one trip to town a week?

A. Yes, sir.

Q. And you use that ticket and use it for your wife?

A. Yes, sir.

Cross-examination.

(By Mr. Bikle:)

Q. You have suggested an analogy of the case of the Telephone Company. The ordinary contract of the Telephone Company gives you so many calls a year—

A. No, we have unlimited service out there.

Q. Let's take the city?

A. I don't live in the city and don't know anything about it.

Q. You understand the telephone in the city does give you so many calls a year?

A. Yes, I guess they do.

Q. And you don't get any rebate on your monthly rides if you don't quite use them?

A. Yes, you do. There are other classes. If you happen to be charged in a high class—

Q. That's it, you get your rebate on the class below that?

A. Yes.

151 Redirect examination.

(By Mr. Bowie:)

Q. And in your residence telephone you get unlimited service?

A. Yes, sir.

Q. In the city as well as the country?

A. I don't know about that.

Q. Now, the strip ticket is supposed to be increased at Ruxton from \$1.53 to \$1.89. Now, do you consider that a reasonable increase?

A. No, I don't consider it a reasonable increase.

Q. Assuming an increase is needed, do you consider that's a reasonable increase?

A. If the railroad needs an increase they should not get it from the regular customers that daily go in and out to the country and get their regular business from. I don't think they should get it from the commuters at all.

Q. They are all increased at about what percentage? \$1.53 to \$1.89, that's about thirty per cent?

A. I am not a mathematical expert.

(Mr. Darnell:) That's about thirty per cent.

Q. That would fall on you, would it not?

A. Pretty heavily.

(Examination concluded.)

152 WILLIAM PINKNEY WHYTE, a witness of lawful age, produced on behalf of the complainants, having been duly sworn according to law, testified as follows:

Direct examination.

(By Mr. Darnall:)

Q. You live at Ruxton?

A. Yes, sir.

Q. How long have you lived there?

A. Since the middle of July, 1888.

Q. Do you use the 100-trip ticket?

A. Yes. Now use the monthly. Have one in my pocket now.

Q. Explain the different kinds of tickets you use?

A. I use the monthly ticket, the quarterly ticket, and I have used the 100-trip ticket. I think at one time I did use the family ticket when it was in existence.

Q. You found the 100-trip ticket cheaper to you than the others?

A. Yes, sir. I average as well as I can calculate 20 round trips a month. And this ticket (indicating) is dated December 10th. Now, prior to that, I found I bought my other ticket on October 5th and used in 66 days—I made 50 round trips on the Northern Central. Now, that left 19 days—16 days in which I didn't ride on the road. Now, of those 16 days there were five Sundays and

two holidays; that would leave five working days in which I didn't use the road. I am a lawyer practicing in Baltimore and Towson.

Q. There are *nine* Sundays?

A. Yes, that's right.

153 Q. And two holidays?

A. And five week days in which I didn't ride on the road.

Q. Why didn't you ride on the road these working days?

A. I am a lawyer and have some practice in Towson and so far as I can dope it out these five days I was in Towson.

Q. Will you explain the difference in conditions at Ruxton from the time you went there in 1888 up to the present time?

A. Ruxton in 1888 had about three houses in it and it was a cornfield. It had a shed for a station and the travel there was hardly anything. Since that time it has been built up and I lay it entirely to the service over the Northern Central; it has been built up to, I believe, the largest commuting station, we will say, on the Northern Central, that is, on this main line of the Northern Central. I don't know anything, of course, about York, or about there, but I believe that this is the largest commuting station on the Northern Central. I can't say how many people are up there, but the growth in that time has been terrific.

Q. Explain what advantages were had at that time as against the present service?

A. At that time, in 1888, the train service as I recollect it was, if anything, better than it is today. The accommodations were well nigh perfect. Mr. Wilkins was the agent of the Northern Central at that time and he lived at Riderwood, and Mr. Caplan was the agent after Mr. Wilkins and he lived at Ruxton. The policy of the road was—well, it was a very broad and liberal policy to its commuters. You could put a package in the station and leave it there and it was taken care of, if there was a station agent—if not, you took your chances. There was no charge for that. There is a charge for it now. You couldn't leave a pair of rubber shoes at Ruxton unless you paid ten cents for it. Every package was carried free; marketing was free up until September 1st last, when the new rule went into effect that marketing was to be charged for. I believe it is charged in varying sums, from five to ten cents, up to twenty-five cents.

154 Q. What do you consider the eliminating of this free market service costs you per year?

A. I should say anywhere from \$30.00 to \$40.00. I can't calculate that, only approximately.

Q. Have you any idea what the elimination of free service on packages generally has cost you?

A. I can only approximate that, probably \$20.00 more.

Q. Do you use any freight?

A. My freight bills as well as I can estimate them up to this time far a year back—and I am very sure I have missed some—have been \$60.00, and that's not a large amount.

Q. You usually buy, do you not, a carload of coal a year?

A. Yes, I just paid a freight bill of \$43 and some cents to the Pennsylvania Railroad on one carload of coal.

Q. Do you know what the conditions generally are for other people buying coal?

A. At Ruxton there are many in the same boat; most of them buy a carload of coal a year.

Q. Mr. Whyte, you have sold a good deal of real estate at Ruxton?

A. Yes, sir. This year quite a good deal at Ruxton—I have sold pretty close to \$25,000.00 worth.

Q. During the last year?

A. Yes, sir.

Q. Were you able to sell that property because of the good service and the reasonable rates applying there?

A. Train service is everything. The first question out of the box from the prospective purchaser is, how much does it cost. Also, for instance, the servant question which also enters into the 155 developing of a suburban locality; and there is always another agent that has a piece of property on a trolley system.

Q. You consider the increase brought about by the elimination of this 100-trip ticket and the proposed increase of twenty per cent in the strip ticket will affect the values of property?

A. Yes; affect the value of it and affect building also.

Q. Mr. Whyte, what is your idea of the difference between the 1,000 mile ticket and the original commutation 100-trip ticket?

A. Two entirely different things. The 1,000 mile ticket is only for the occasional traveler who may not live on the road at all. He can get it as well as anybody else; he can't get the 100-ride ticket unless he owns property or is a patron of the road. The 1,000 mile ticket is good to the holder of it wherever he may be, and there is the other ticket, a signed ticket and is only good between two points, and what is more, the holder of it can't let any member of his family ride on it.

Q. Do you know whether or not the residents at Ruxton have to furnish their servants with this strip ticket?

A. All of them invariably do, as far as I know. They can't keep them very well unless they do. It's one of the very serious questions.

Q. Is it considered a hardship, the increase from \$1.53 to \$1.89?

A. Yes, it makes a difference between the two in a round trip of over eighty cents.

Q. Have you anyone else in your family besides your wife and yourself who use the railroad?

A. My brother who is practically a daily commuter, who lives with me. Of course, there is no such thing as a daily commuter as far as Ruxton is concerned. This gentleman who testified here a little while ago from Lutherville is the only one that came up to the ideal condition of a daily commuter; I never heard of it.

156 Q. What ticket does your brother use?

A. The 100-trip ticket and as well as I can estimate, he uses it about 23 days in the month, taking the whole year around.

Q. That's all.

Cross-examination.

(By Mr. Bikle:)

Q. In regard to your freight, you get your coal directly from the mine?

A. I buy it from a dealer here in Baltimore who ships it to me by the car, and before I get it I pay the freight billed by you.

Q. But you don't pay a bill from Baltimore to Ruxton?

A. On coal?

Q. Yes?

A. I don't know whether that comes down the road and is weighed in Baltimore and then sent to me.

Q. You pay the rate from the mine to Ruxton?

A. I presume I did.

Q. You know that coal doesn't come into Baltimore and pay one rate to Baltimore and another from Baltimore out to your place?

A. I don't think so.

Q. And if you lived in Baltimore you would consume the same amount of coal at about the same rate?

A. No, I don't know about that.

157 Redirect examination.

(By Mr. Bowie:)

Q. You don't know whether the coal you buy comes from any local place or right down from Conawingo right to Ruxton, or not?

A. I have no idea.

Q. And you don't know whether the freight you pay includes that transportation or not?

A. No.

(The Chairman:) What do you think of the reasonable fairness of the charge for the 100-trip ticket of one cent a mile compared to other users of transportation?

(The Witness:) Assuming that the raise is found to be necessary on any class of ticket; assuming that the raise is essential for that rate and there is a twenty-five cent raise in the monthly ticket I think the 100-trip ticket ought to be increased with it. I think therefore there ought to be a raise of fifty cents on the ticket. To raise that ticket a flat rate of a cent and a half wouldn't be fair at all. At a place like Parkton you are doubled up and at Cockeysville you would raise about from \$15.00 to \$22.50. But, if you raise the same ticket fifty cents that, in my judgment, would be a fair increase on the 100-trip ticket over the monthly, assuming the monthly is to be based on the new rate.

(The Chairman:) You wouldn't put it on a percentage?

(The Witness:) No, sir, I wouldn't put it on a percentage basis. I would put it like the railroad does it—as I understand, proposes a flat increase of twenty-five cents on the monthly ticket, in their schedule, as I understand it. Now, I think that I would carry the same logical conclusion out; I would raise the 100-trip ticket fifty cents.

(The Chairman:) You would just raise the basis and let the mileage stay as it is?

(The Witness:) Yes, sir.

158 (By Mr. Darnell:)

Q. Do you know whether there are any traveling men living at Ruxton?

A. Yes, quite a good deal; they are traveling all the time.

Q. What tickets do they use?

A. Of course, the 100-trip ticket between Baltimore and then they use the regular mileage book.

Q. What I want to bring out is, that these traveling men live there?

A. Yes, sir.

Q. Own property?

A. Yes, sir.

Q. Families live there?

A. Certainly.

Q. Travel on the road and get their marketing there and use package stamps and have freight?

A. Yes, sir.

Q. And because they happen to be out of town two or three days a week they use the 100-trip ticket?

A. Yes, sir.

Q. And if that ticket was eliminated is there any other ticket they could use?

A. Only straight fare and mileage.

Q. Don't you consider that man a cummuter?

A. I certainly do.

159 Recross-examination.

(By Mr. Bikle:)

Q. I think that everybody that has testified so far has indicated that the 100-trip ticket — used at least in extent of 20 trips a month?

A. Yes, sir.

Q. Do you see any reason why the limit of that ticket should not be three months?

A. Well, personally, Mr. Bikle, I wouldn't object to it, but I can see where in the case of a traveling man that would be too little.

Q. Let me ask you this: Do you think that one trip a week entitles a man to the low rate of this 100-trip ticket?

A. No, sir, not one trip a week, taking the average on the year round on that; no, sir.

(The Chairman:) Two trips a week—one round trip makes two trips on the 100-trip ticket.

(The Witness:) That's what I understood Mr. Bikle to mean when he said one trip.

(The Chairman:) Now, Mr. Whyte, this is a round trip, ticket from Ruxton to Baltimore under the new rate of two and a half cents.

(The Witness:) Yes, that's the same as a straight fare.

(The Chairman:) No advantage in that?

(The Witness:) You might as well buy a single trip, and if caught out at Ruxton—there is no advantage of buying a round trip the next day.

(The Chairman:) I will use mileage; mileage is two and one-quarter cents now. That is a little cheaper than straight fare.

(The Witness:) Yes, sir, a quarter of a cent.

160 (The Chairman:) If a man uses a trip a week on the 100-trip ticket from Ruxton in, you don't consider him a commuter.

(The Witness:) While he lives there? No, sir. I don't think he is entitled to the same rate as the man who travels half a week.

(The Chairman:) As the ticket now stands, he gets the use of the 100 trip anywhere within twelve months.

(The Witness:) Yes, sir.

(The Chairman:) And in the use of mileage which is the next cheapest, would be two and a quarter cents, that he would use any time within the same period of twelve months.

(The Witness:) Yes, sir.

(The Chairman:) Do you believe one cent approximate fare on 100-trip ticket is relatively fair as against two and a quarter cents for the man that uses mileage provided the mileage is used within twelve months and the commutation used in twelve months?

(The Witness:) The only way I can answer that is to say that I think the limit of the 100-trip ticket should be six months. That would prevent a man using it once a week.

(The Chairman:) Would have to use it twice a week?

(The Witness:) Yes, sir.

Redirect examination.

(By Mr. Darnell:)

Q. Don't you consider the man a commuter using it twice a week?

A. Yes, uses it twice a week. If he don't use it that much they could buy this 10-strip ticket at its rate.

(Examination concluded.)

161 EDWARD G. GIBSON, a witness of lawful age, produced on behalf of the complainants, having been duly sworn according to law, testified as follows:

Direct examination.

(By Mr. Darnell:)

Q. Where do you live?

A. I live in Baltimore City, but sometimes six months in the year and sometimes less I live in Baltimore County at Riderwood.

Q. What ticket do you use?

A. Always the 100-trip ticket.

Q. What ticket do the members of your family use?

A. My wife uses the 100-trip ticket and my servants use the 10-trip ticket.

Q. Mr. Gibson, do you know Mr. Clayton Hall?

A. I know him very well and he is an attorney and a very competent man on figures.

Q. Have you a letter from Mr. Hall in reference to this matter?

A. Yes. It really isn't evidence, but it embraces my views so well.

(Mr. Darnell:) We want to say that we asked Mr. Hall to be here.

(The Chairman:) You can file it if you want to; read it first and then file it.

A. (Reading:)

162

"BALTIMORE, December 8th, 1914.

Mr. Arthur C. Gibson, c/o Safe Deposit & Trust Co., 13 South Street.

"DEAR SIR: With this I return the copy of the petition of the Ruxton and Lutherville Improvement Association which I did not have a chance to read before leaving my office on Friday.

"The case seems to me to be well presented, but I will call your attention to the following points:

"1. In paragraph Fourth in connection with the menuon of the recent dividend of 40 per cent, I think it should be made plain that this is new stock, representing surplus earnings spent upon the road, and that 8 per cent dividend is guaranteed upon this new stock as well as upon the old, so that the Pennsylvania Railroad Company found it to its advantage, while the old rates were in force, to lease the Northern Central Railway and guarantee a dividend equal to 11 2/10 per cent upon the capitalization as it existed last spring.

"2. As regards commutation tickets, illustrations are given in paragraph Seventh of cases of a man and his wife, the one taking trips more frequently than the other. It seems to me that it is the patronage of the commuter's household that is to be considered as that is what results from his residence upon the line of the road. Recognizing this fact the Northern Central Railway Company formerly issued family tickets, but these were long since abandoned. No doubt there were difficulties about identification, etc. But take my own case (which I suppose is typical of many others) as an example. I live at Ruxton six months in each year, three in the spring and three in the autumn. This has been my practice for a number of years. From the best computation I can make I pay annually in the purchase of 100 trip tickets and 10 ticket strips for myself, the members of my family and my servants during my six months of residence, for about 1,000 trips over the road at a cost of about

\$120 or an average of 12 cents per trip. These 1,000 trips 163 taken in about 183 days represent an average of nearly 3 round trips daily; and it is immaterial whether I take them personally or by some other person of my household for whose fare I pay. The wisdom of encouraging that sort of patronage has been long recognized. Its discouragement would be a short sighted folly

as well as a gross injustice to patrons of the road who have been induced to become such relying upon fair and reasonable treatment.

"3. The railroad company claims improved service as a pretext for increased rates. As far as the local service out of Baltimore is concerned, it has not improved, but has deteriorated. The trains are fewer, less convenient and run upon a slower schedule and less punctually, while many accommodations formerly accorded have been withdrawn.

"I understand that the road now proposes to offer the ten ticket strips at \$1.80 instead of \$1.53, an advance of about 17½ per cent, and a higher price than is now asked for single round trip tickets (limited) and an increase of 50 per cent over the average price which I now pay. The 100 trip tickets might, I think, reasonably be continued with some greater restriction upon time. Say 100 trips good for six months and 50 trip tickets good for three months.

"The Corporate name of the road as I believe, — Northern Central Railway Company, not Railroad Company.

"I enclose a clipping from the New York Evening Post, November 30th, 1914, indicating that the proposed increase of commuters' rates has in some cases been abandoned.

"Very truly yours,
(Signed)

CLAYTON C. HALL.

"Since the above was written I have been told that the Public Utilities Board of New Jersey has sustained the contention of the commuters and prohibits the proposed increase in fares."

164 NOTE.—Said letter just above referred to is here filed in evidence and marked "Complainants' Exhibit No. 1."

Q. He is a man who we consider a real commuter. Mr. Gibson, are you a user of any freight?

A. I am.

Q. Explain, if you please?

A. I have a small place, only five acres—it is consequently necessary for me to get my feed from town for my horses and cow and pony, and I am quite sure that that feed is brought first to Baltimore City by C. B. Watkins & Company, from whom I purchase it, and then I pay the freight from Baltimore on the feed to Ruxton. That is not like the coal which pays a straight rate from the mine. In the case of the feed that I buy I know the rate is paid to Baltimore City first and then shipped by C. B. Watkins & Company from Baltimore City to Riderwood. It isn't much, probably amounts to \$10.00 or \$15.00 a year. In the same way, many other goods come out by freight. And then, I wish to say I do think the question of package stamps on marketing is really a very serious one. I figured it—just from my standpoint—I am in the habit of dealing with William Maynadier out here on North Calvert Street, and never in one day did the package stamps amount to less than eighty cents. That amount, if we were out there fifty weeks in a year—that would be a considerable expense for our marketing. There was no kick

made about it. I have never heard a single objection, but we are all sorry it's so. It seems to me it is going to add very much to our expenses by paying twenty-five cents on a ticket when you are paying eighty cents a week or ninety cents or \$1.00 a week just for your marketing, it's a good deal more than twenty-five cents on a monthly ticket to the individual user. I should say that the commuter is really a by-product of the railroad. He pays for through packages—through freight—through expressage and he pays fare in a great many instances—just as Mr. Hall says—it makes no difference whether he actually uses these three trips a day, he is paying for somebody else to use it and it is necessary for him to get his service night and day.

Q. You own your property, do you not?
165 A. I do.

Q. What is your idea as to the difference between the mileage book and 100-trip ticket?

A. I think it's explained entirely by my explanation—or by my saying that a commuter as such is a by-product of the railroad. A mileage book wouldn't be a particle of use to the ordinary commuter as such, and a 100-trip ticket wouldn't be of any use to a man who uses a mileage book, and he is not a feeder of the railroad in any sense of the word. I may be living at Riderwood and I might buy a 1,000 mile ticket. In fact, I have. I have a 1,000 mile ticket in my pocket now that I haven't used once between Riderwood and Baltimore, but I have between Baltimore and New York and Richmond and Washington. But, it isn't any good to me as a commuter.

Cross-examination.

(By Mr. Bikle:)

Q. Do you know whether or not I am right about my assumption that the coal that comes down to the suburbs in carloads don't come from the mines?

A. I am quite sure it does in my case, because I buy all my coal in Lutherville and they pay the freight to Lutherville and send it down in wagons.

(Examination concluded.)

ALFRED TYLER, a witness of lawful age, produced on behalf of the complainants, having been duly sworn according to law, testified as follows:

Direct examination.

(By Mr. Bowie:)

Q. Do you live at Ruxton?

A. Yes, sir.
166 Q. What ticket do you use? Do you travel between Baltimore and Ruxton on the Northern Central?
A. Yes, sir.

Q. In business in Baltimore?

A. Yes, sir.

Q. What ticket do you use?

A. I always use a 100-trip ticket.

Q. Have you tried the monthly trip ticket?

A. I did the 1st of December.

Q. What was your experience?

A. I bought a monthly ticket on the 1st of December; I lost it on the 4th of December. I just found it this morning. In the meantime I bought 10-trip tickets and this 100-ride book. I now have all three of them in my pocket. On the monthly ticket I used three round trips. I will have to use it the balance of this month, but between the 3rd and 4th and 14th I used the strip ticket until I got enough money to buy a 100-ride ticket. In that case, these strips were an absolute loss to me. I could not ride over the railroad on it.

Q. What ticket does your wife use?

A. She uses a 100-ride ticket.

Q. What tickets do your servants use?

A. The 10-trip ticket.

Q. You own your property in Ruxton?

A. Yes, sir.

Q. What about your living expenses after the elimination of the free market service?

167 A. I have never figured it out, but I have figured out what these increases in rates would be to my family.

Q. There is a substantial increase in the elimination of the system of market packages?

A. Yes, in fact, we have almost discontinued using the market from that. We buy it from Towson and they travel out there and leave it there. We used to buy from where Mr. Gibson buys, Maynadier's, but we discontinued and now buy from Towson.

Q. You state you have made some calculation as to the cost of the raise of rates? Will you give us the benefit of those?

A. My wife uses about two 100 ride tickets a year; that makes it \$21.00. I use about five a year, that allows me a little over two a month—about two months and five or six or seven days. It costs me \$52.00. Then we furnish our servants with two round trips a week, that means \$32.24, with a total cost to my family of \$105.74 under the present rate. Under the proposed rate, the two-trip tickets—Mrs. Tyler would have to buy the 10-trip ticket which would cost her \$37.80 provided she used the same number; I would have to pay \$63.00 and the servants would cost me \$39.21. That makes \$140.11, a difference of \$35.00 a year to my family, about thirty per cent—thirty-three per cent increase to me.

(The Chairman:) The strip ticket is the cheapest ticket you can buy under the proposed rate?

(The Witness:) Yes, sir; for Mrs. Tyler and the servants. I use enough to have the use of the monthly ticket.

Q. Then the proposed new tariff of rates will increase your expenses thirty per cent?

A. At least that; yes, sir.

(The Chairman:) You think the 100-trip ticket should be restored?

(The Witness:) I do, for the benefit of the commuter's family, if not the commuters themselves.

168 (The Chairman:) Should be restored on a fair basis with other classes of users?

(The Witness:) Yes, sir.

(The Chairman:) What do you think that is?

(The Witness:) I think if they increased the monthly ticket twenty-five cents to Ruxton, that is five per cent of the cost—that the 100-ride ticket ought to be increased five per cent which might make it about fifty cents. It seems to me if you increase one ticket the other ticket should be increased at the same rate.

(The Chairman:) You have compared that with the commuter's ticket?

(The Witness:) Yes, sir.

(The Chairman:) Suppose you compare it with 1,000 miles in the mileage book?

(The Witness:) I can't compare that because I never use mileage to Ruxton.

(The Chairman:) You do not?

(The Witness:) No, sir.

(The Chairman:) You still think he ought to have a year to use his 100 trips in?

(The Witness:) Personally to me six months would be all right—to me personally and Mrs. Tyler. She uses, as I say, two trips—

(The Chairman:) You have a year to use mileage and a year to use 100 trips.

(The Witness:) Yes, sir.

(The Chairman:) You make one round trip a week in your case, and the man with mileage could make one round trip a week; he would pay two and a quarter cents and you a cent. Do you think that is relatively fair?

169 (The Witness:) I should say so.

(Mr. Darnell:) One is a commuter—

(The Chairman:) I understood his distinction. I only wanted his understanding as to the difference in the classes of users.

Cross-examination.

(Br Mr. Bikle:)

Q. In regard to the loss of your monthly ticket, didn't you know there was a rule of the company that would permit you to buy your monthly ticket—and when you found this ticket—

A. I consulted two of your officials and they didn't give me the information.

Q. I am sorry of that?

A. I consulted Mr. McComas at Ruxton and he said, will you give me your name and I will notify the company. I went to Union Station and notified them and said, any rebate if I find that, and he said, absolutely no.

Q. The rule didn't do you any good then?

A. I didn't know anything about the rule.

(Examination concluded.)

J. WISTAR HUEY, a witness of lawful age, produced on behalf of the complainants, having been duly sworn according to law, testified as follows:

Direct examination.

(By Mr. Bowie:)

Q. Mr. Huey, you live at Ruxton, do you?

A. Yes, sir.

170 Q. Ride on the Northern Central?

A. Yes, sir.

Q. Your family as well?

A. Yes, sir.

Q. You formerly lived in Philadelphia, did you not?

A. Yes, sir; until I was over twenty years old.

Q. You were a commuter there?

A. Yes, sir. We used there—that is, the family did—I used a regular monthly ticket. The family used what is called a family ticket.

Q. Did you ever try to get one here?

A. Yes, sir. I lived at Sherwood before I owned some property here, and tried to get that sort of ticket here and couldn't get it. I produced this one which I used in Philadelphia, and they told me I couldn't get it here.

Q. What ticket do you use at the present time?

A. I use a 100-trip ticket. I have used all the tickets really, the three months' ticket, the monthly ticket and the 100-trip ticket.

Q. Which ticket do you find best suited to your needs?

A. The 100-trip ticket.

Q. You are in business in Baltimore?

A. Yes, sir.

Q. Do you use any other tickets in your family?

A. Yes, sir.

Q. What kind?

171 A. This is the point—I don't know whether it has been brought out. I have several children—four children. The minute they are twelve years old—practically all the children go in town to school—as soon as they are twelve years old I have to use the full ticket. I use the 100-trip ticket they have as being the only ticket that is really good enough for that purpose. The school ticket doesn't take out for vacation, Christmas holidays, and Easter holidays. Anyone who has had children knows how liable they are to disease that grown people don't have. They go to school one day and come home sick with the whooping cough and measles and all that sort of thing. I know other people out there that have large families and they are all using the 100-trip ticket for their children. They have always used two 100-trip tickets a year apiece.

Then, I use possibly five or six a year myself; I generally use one every two months. But that school question is a very serious one for any one who has school children.

Cross-examination.

(By Mr. Bikle:)

Q. Don't you think the reduced school ticket is sufficient?

A. It isn't reduced; it figures out the same as the monthly ticket.

Q. It figures out at 46/60ths of the monthly ticket?

A. You have no provisions for holidays, two or three weeks at Christmas and a week or ten days at Easter, and then sickness which is a very serious element to children.

(Mr. Bowie:) You have tried the school ticket?

(The Witness:) No, because I figured it out at the same price as the other and I have the chance of saving on sickness and on vacations. The school ticket is not a good ticket.

(Examination concluded.)

172 ARTHUR GIBSON, a witness of lawful age, produced on behalf of the complainants, having been duly sworn according to law, testified as follows:

Direct examination.

(By Mr. Darnell:)

Q. You live at Ruxton?

A. I do.

Q. And you are a daily commuter on the Northern Central?

A. I am.

Q. Engaged in business in Baltimore?

A. Yes, sir.

Q. What business?

A. I am with the Safe Deposit and Trust Company.

Q. What ticket do you use?

A. I usually used the monthly ticket up to this summer, when I was away on my vacation I found I broke into the middle of the month, and since that time I have used the 100-ride ticket. I use practically fifty rides a month, so that the actual cost to me with the exception of the time off in the summer is \$5.25 a month, and this vacation period as I say, would cost me to adjust that probably about \$3.00 or \$4.00.

Q. Then you found that the 100-trip ticket answers your purposes better than the monthly ticket?

A. I found the 100-trip ticket while producing the same revenue from me to the railroad that the other ticket has produced—the calendar month perhaps doesn't always work out.

Q. Mr. Gibson, have you made any calculation as to the increase that would be brought about by this proposed tariff and, if so, would you explain, please?

173 A. I figured, in the first place, how it would affect my household. My wife under ordinary circumstances goes to

town about twice a week, sometimes three times. At the present I have two servants, and it is part of my agreement with them that I shall pay their fare into town and back twice a week, and I figure that with such other fares as I pay in and out that I average outside of my own commutation travel one round trip a day, which amounts to about \$111.00, which is generally purchased on a 10-trip basis. In addition to that I have two small children and I figure that they average a round trip a week, and my total railroad expense to me personally is about \$175.00, I should say, a year. Now, the increase on the monthly ticket if I can adjust it to meet my vacation would not amount to a great deal, and I don't think anybody seriously objects to the question of a twenty-five cent increase on the ticket, but when it comes to the 10-trip ticket the increase on that item would amount to about \$26.28, and just at that point I want to call attention—of course, if we commuters travel in between Calvert Station, we figure, of course, between Calvert Station on a ticket and if you are going to accept the two and a quarter cent rate or put them on the same basis as the wholesale dealer in tickets, I am not quite able to understand why the ticket should figure from Calvert when there are a great many users from Union. That might seem a small point, but it amounts on each round trip, for instance, to the servants, I have to pay a difference of four and a half cents on each round trip. I am just simply mentioning that to show about this increase of rates that works a hardship. Now, as far as the 100-ride ticket is concerned that impresses me as being the most satisfactory form of ticket, and I don't think the present net business of the railroad would lose much by issuing the 100-ride ticket to them. Now, a man must come to town every day and I think his family are also commuters and are entitled to consideration because they move from a fixed point to a fixed point; when you take the mileage man, he has only one point on the line of the railroad. Now, since I have been at Ruxton—I am a renter at Ruxton—it has been four years to show what commutation has done for the railroad—there were three houses. Since that time there have been five additional houses, and figuring on a basis of say \$100.00 on each household which is considerably less in our neighborhood, it means to the railroad that at fairly little expense, has received practically \$500 revenue, and that is where the commuter answers the question of "Does it pay?"

174 Q. That's an increase of five houses on the avenue on which you live in Ruxton during the last four years?

A. Yes, sir.

Q. What is your idea about the increased cost of living to you from the element of marketing—of free marketing?

A. I should say in the summer time the additional expense would average about forty cents a week and in the winter time it might probably average us twenty or thirty cents, because in the summer time we get most of the goods daily whereas in the winter time you can hold them better.

(Examination concluded.)

ALFRED TYLER, a witness of lawful age, heretofore produced, sworn and examined, is recalled and testified as follows:

Redirect examination.

(By Mr. Darnell:)

Q. Mr. Tyler, some statement was made by counsel on the other side that if your monthly ticket was lost a new ticket would be issued and the money refunded. Will you please read on the back of that ticket, what it says?

A. (Reading:) "If lost or destroyed, no refund shall be made or duplicate ticket be issued or fares paid in its absence be refunded."

(Mr. Bikle:) Mr. De Long is going to produce the tariff I referred to.

Q. Do you suppose in view of the signed contract which you had with the railroad that you had rights that you could assert against the railroad?

(Mr. Bikle:) He did have rights.

Q. Did you have any knowledge of these rights?

175 A. No, sir.

(Mr. Carter:) He had constructive notice of the tariff on file.

Q. That's all.

(Examination concluded.)

ROBERT FUSSELBAUGH, a witness of lawful age, produced on behalf of the complainants, having been duly sworn according to law, testified as follows:

Direct examination.

(By Mr. Bowie:)

Q. Mr. Fusselbaugh, you live at Riderwood?

A. Yes, sir.

Q. You have how much property there? How large a place?

A. I have about sixteen acres.

Q. Represents a large investment, does it not, and improvements?

A. Yes, sir, considerable.

Q. How long have you been out there?

A. I moved out there in 1903, in March.

Q. Did you at the time you moved out there have any talk with the officials of the Northern Central Railway as to your locating there and the advantages?

A. Yes, sir.

176 Q. What representations, if any, did they make to you?

A. Before I decided to move on that road I went to the ticket headquarters in Baltimore, at Baltimore and Calvert Streets and I asked them in regard to transportation, and they gave me a list of tickets that they offered to commuters—people who would

settle on the road—straight fares and round trips and etcetera, and the advantages of these tickets and the advantages they would also give to — family that located on the road. At that time the advantages they offered were free transportation on miscellaneous merchandise packages that are an absolutely necessary thing in the suburbs, and they could be sent to the passenger room at Calvert Station and they would be sent out to my station. All I would have to do would be to go to my station and get these packages. After possibly two years, that advantage was taken away from us, and I think it was possibly two years that the same charges were put on certain classes of merchandise. Another advantage was that all necessities for the table, groceries, marketing and etcetera, would be transported free, and that was eliminated in a comparatively short while—they decided they would charge something like five cents for every 10 pounds of groceries. That charge was put on. The laundry basket was originally carried free—the next proposition made from the railroad company was they couldn't carry the laundry, the hampers. I stopped having my laundry attended to in town and since then have had it done in the neighborhood. The next proposition was the elimination of the advantage of sending the marketing free. I think I have a pretty large establishment out there—my marketing amounts to something every week.

Q. How much is that?

A. I looked over some of my tickets this morning that I happened to have and I found the charge for the marketing that they proposed originally to carry free was from fifty cents to \$1.00 a week.

Q. You have how large a family?

A. I have a pretty good sized one. I have six 200-pounders out there; they will average that, anyway. I am very much afraid if they charge by weight that I will have to come into town, that's certain.

177 Q. Mr. Fusselbaugh, what ticket do you use?

A. I used the quarterly ticket, I think, for the last two years. I think that—I think that ticket is \$14.60, isn't it? For Riderwood?

Q. I can't recall off-hand. What does your family use?

A. I have at present two school tickets—100-trip ticket, and I don't know how many 10-trip tickets in a year. I never kept account of them.

Q. After you moved out there they attempted to remove another advantage, did they not, in bringing you nearer to the center of the city?

A. You refer to the proposition of stopping at Union Station?

Q. Yes?

A. Yes, sir.

Q. Was that one of the inducements?

A. No, sir. The inducement was—the special inducement and the one that appealed to me mostly was this miscellaneous merchandise—you are not a good suburbanite unless you have bundles under

your arm every day—the greatest inducement they offered me at the headquarters was that these things were attended to by the Northern Central Railway. All I had to do was to go to the various merchants with my memorandum and order the stuff there and they delivered it to me, down to Sherwood.

Q. Calvert Station was then in operation?

A. Yes, sir.

Q. They have since attempted to discontinue service there?

A. Yes, sir.

Q. Did you have any part in the controversy?

178 A. Oh, yes. I naturally protested against it. I thought I had a contract with them when I went out there.

(NOTE.)—No cross-examination.

(Examination concluded.)

(Mr. Bikle:) Might I clear up the matter of that lost ticket—the number of the tariffs on file with this Commission is 55 P. S. C. Md. I am perfectly frank to admit that the words on the ticket do not lead a man to imagine that this rule is in existence, but the rule is perfectly consistent with the rule on the ticket. It provides when the lost ticket is recovered, and it is shown that no more than the proper number of rides is taken on the two tickets, the amount paid for the second ticket will be refunded. There is nothing paid on account of the first ticket, but the second ticket bought and the amount paid for that will be refunded. Of course, when the ticket turns up—

(Mr. Darnell:) There is nothing on the ticket to show the user that.

(Mr. Bikle:) I appreciate that, and that is unfortunate. This is a tariff really that our agent should have known about.

(Mr. Bowie:) I want to put the case as it appears to Mr. Tyler. Now, let us look at one other feature of it. This is a tariff issued in July, 1909, covering the local and inter-division passenger tariff of adjustment on lost commutation tickets. Now, you take the man who goes, as every one does, to the railroad offices and asks for the local tariff on file, and he is handed this one which is our No. 259, which contains rules and regulations as to commutation fares and doesn't say a word about that and they tell him if it is lost or destroyed that he can't get any money back, and I defy anyone to produce a man who has ever lost a ticket in this section with these tariffs on file who has ever known of that rule.

(Mr. Donaldson:) These are the same filed—the files of this Commission—

179 (Mr. Bowie:) I beg your pardon—

(Mr. Donaldson:) But they are both in the same files, the files of this Commission.

CHARLES W. HOFF, a witness of lawful age, produced on behalf of the complainants, having been duly sworn according to law, testified as follows:

Direct examination.

(By Mr. Darnall:)

Q. Where do you live?

A. Riderwood.

Q. How long have you been living there?

A. About thirty-five years.

Q. In business in Baltimore?

A. Yes, sir.

Q. Using the Northern Central Railway?

A. Yes, sir.

Q. A daily commuter?

A. Daily. Temporarily in the city now for a few months.

Q. What ticket do you use?

A. The 100-ride ticket.

Q. Any members of your family that use the 100-ride ticket?

A. Three children going to school and my wife as well.

180 Q. You find that the cheaper ticket?

A. I do.

Q. Mr. Hoff, what's your idea as to the increased cost of living due to the elimination of the free market packages?

A. I don't know, probably \$40.00 in a year.

Q. Did you have free packages when you went out there?

A. Absolutely.

Q. That has been cut out?

A. Cut out; yes, sir.

Q. Will you explain the difference between the present 10-trip ticket and the proposed 10-trip ticket?

A. As I understand, the 10-trip ticket is a ticket to be punched, 10 trips on it. There are a good many of us wouldn't care to have one—you meet your friends at the station and they take one ticket and whereas if you have a 10-trip ticket you can tear off a ticket and give them to return, whereas if you had a punched ticket you could not do that.

(The Chairman:) The difference between them is a strip ticket and a punched ticket?

A. Yes, sir.

(Examination concluded.)

(Mr. Bikle:) We asked our expert, Mr. Fell, to gather together the information requested and Mr. Fell by working until three o'clock this morning, is prepared to do so, with the exception 181 of the marketing figures. They will be here this afternoon.

Mr. F. J. FELL, a witness of lawful age, produced on behalf of the complainants, heretofore sworn and examined, is recalled and testifies as follows:

Direct examination.

(By Mr. Bowie):

Q. Yesterday you gave me, as I understood it, for the year 1910, the ratio of your operating expenses to your receipts, 96 per cent, in 1910?

A. Of business on the Northern Central?

Q. Yes?

A. Just a minute, I will verify it.

Q. You gave me the figures running in 1908, were 80, 86, 106, 105 and 106. I mention that simply so as to connect you up with the subject you were testifying on?

A. 88 per cent for 1910.

Q. No, 96 I have?

A. That's the passenger business. 1909 was 96.51 operating ratio to the passenger business; 1910, 105.40. The figures on a whole including all the business of operating ratio in 1910 was 81.31 per cent and that goes to 92.97 per cent in 1914.

Q. Now, Mr. Fell, yesterday I asked you for certain data which you promised to produce today; certain statements; have you prepared those?

A. Yes. That has been prepared. This is a statement of the trains—the cost inherent in the train, on trains between Baltimore, Calvert and Parkton and Union. By that I mean the costs which are attributable to the train and do not include any of the maintenance of the tracks, etc. For your assistance, the last of the list is a synopsis of the returns.

Q. Mr. Fell, this statement which is marked A, giving the inherent cost in the train, has an expense as one of the heads, engine expenses per train an average of \$9.02 on each train except one, which is \$8.72. Tell us what that engine expense means.

(Mr. Birkle:) If I might interrupt, in order that this might be intelligently done, I think Mr. Fell could explain what is there before you ask him about a special item.

(Mr. Bowie:) Yes, if you wish it that way, we shall be delighted to have it.

(The Witness:) The first block of figures on this statement indicate the trains between Baltimore, Calvert, and Union and Parkton, the second block, we have endeavored to equalize the trains. By that I mean that a train which runs six days in the week was given as six trains, and the result is the upper block multiplied by this as applicable to that particular train to give the weekly returns, and if the train was run on Sunday only it was put down as one time. Where it ran every day but Sunday and Saturday, it was multiplied by five in order that we could arrive at a weekly basis equalizing the trains that we ran every day and Sundays only and five days a week. Now, as to the column: Train mileage, of course, is the distance be-

183 tween Parkton and Baltimore. The number of cars is, of course, very plain. The mileage is the number of cars multiplied by the miles of the run; the wages of the engine crew and the wages of the engineer and fireman; the wages of the train crew and the conductor and baggage master and brakeman, which are absolute expenses. Now, then, we come to the engine expenses. The engine expenses include the depreciation of the engine, and fuel and lubricants and water and the engine house expenses. That figure is not an absolute figure; it's based on the entire division returns on the system. By that, I mean the repairs to the locomotive prepared from the whole system on a basis of the mileage and to that extent that figure is subject to criticism. The passenger car charges and the repair to the passenger cars which are subject to the same criticism, and the depreciation and the lubrication, the absolute figures per train mile being the wages of the engine crew and train crew are a little over twenty cents. The total cost of this train taking these two items which are subject to criticism—the cost is sixty cents a train, without any cost of terminals. It costs about \$2.00 a train in Union Station and a little bit over three and a half for a train in Calvert Station. Distributing that on the mileage basis would be about thirteen cents for Union and about twenty-some cents for Calvert.

(Mr. Bowie:) I would like to explain to the Commission at this time our reason for going into this feature of the case. We were met yesterday with a most impressive condition; we were told about a railroad—I was aware as the public is generally, and it has been reflected generally in the large valuation that the company has placed upon the stockholders of this railroad—we were told that this railroad which we considered a most valuable asset was, in point of fact, a losing proposition. In order to demonstrate then that these figures are inaccurate not from the standpoint that the witness testified that anything wasn't true from the figures, but the basis of the figures was wrong—in point of fact that the railroad has told us they are unable to separate their passenger business and tell us the proportion of expenses to it and we were of necessity required to go in and analyze their entire charges. Because, if the burden is still upon us to show that there is no necessity for this raise we can only do it by an analysis of their entire operation of this railroad—that the thing on its face is a profitable one—is, of course, demonstrated by their entering into a lease in which they granted 11.2 per cent on the original capital, which had one stock dividend in it some years ago of ten per cent. Now, the Pennsylvania Railroad at that time thought it was valuable or they wouldn't have entered into a lease guaranteeing a much higher return. They tell us now and I understand from one of their witnesses, that one of their reasons for the increase in the rates is that they need the money and in order to show that, they show that the operating of this road is done at a loss. Now, it is perfectly possible for them to be correct and then it is perfectly possible for it to be absolutely preposterous, that it might be preposterous and yet the figures still unchanged on their face due to the fact that there may be an immense

number of improper charges or there may be so many expenses that have no proper place here, but indicated on that statement. Consequently, if the burden still rests upon us to show that the railroad does not need it; that this particular branch of railroad does not need this increase, we will, of course, have to go into an analysis of these charges to do so. That is the reason we felt at the opening of the case that the burden was on them to show that they needed this increase. I understand thoroughly why the Commission ruled otherwise — I felt in order to make out completely our case — I think I have demonstrated it, I don't want to argue it—I think I have demonstrated all the points we made in our case except that the increase is unnecessary, and I can only demonstrate that increase as unnecessary by this analysis. Now, if the railroad wishes to go ahead and prove it is, they, of course, can do it much easier perhaps than we can. I don't ask the other side to agree that we have made out and established our case in all points, but that they can go ahead if they see fit and demonstrate to the Commission why they want this increase.

(Mr. Bikle:) If the Commission please, that will be entirely satisfactory to us. We are ready to go ahead with the presentation of our case.

If I might be permitted before doing that, I want to make a statement that will not occupy more than five minutes. I want to explain exactly how we stand in this situation. I, of course, don't want to criticise Colonel Bowie's theory of the controversy, but we do not think that in this particular case there is involved a discussion of every possible incorporate act of the Northern Central Railway in the past or present situation of that company. We contend that the issue is very small and very plain and that is whether with respect to its passenger business in this territory, it isn't entitled to some more money. Now, we think we will prove beyond peradventure that that situation exists. We think we will also prove beyond peradventure that the advance of fares which we propose is fair and equitable; we believe that the program which we have laid out is one that can be justified. Acting as this Commission well

knows at the suggestion of another body, we have started to
185 increase our passenger revenue and we have started to do that

in what we regard as a reasonable and proper way and in carrying out that effort we have not adopted anything but a subnormal fare. Now, there are two local questions which we shall hereafter possibly be required to discuss before this Commission and that is, first, whether the authority of the Legislature of Maryland ever intended to do more than give the railroad permission if it was desired, to put into effect subnormal fares. Section 17 of the Act seems to make that perfectly clear that there is no obligation on the railroad to establish any such fares, but there is a presumptive right.

(The Chairman:) It is Section 23½A of the last Legislature.

(Mr. Bikle:) The other legal point on which we shall rely is that whatever may have been the intention and purpose of the Legislature in such legislation, no State Legislature in this country can compel either directly or through the medium of a Commission the

establishment of a commutation ticket, relying in that respect on the Lake Shore & Michigan Southern Case, 173 U. S. 674, and certain other cases which I can readily cite. As I have stated, however, and as this Commission knows, this program was submitted to the Pennsylvania Commission and that Commission decided, in its judgment, it was in certain respects practically subject to certain modification. Now, it is our desire that so far as reasonably possible the Maryland people shall not receive at our hands any other treatment than our Pennsylvania patrons and while we are not satisfied in that adjustment we are prepared voluntarily to concede that adjustment if that adjustment is satisfactory to these gentlemen. I think in that connection it is important to note also that that same adjustment is made with at least the *prima facie* approval of the Interstate Commerce Commission because the tariffs which establish that basis on interstate travel have all been permitted to become effective and the significance of that is realized when it is shown, as Colonel Bowie pointed out, when certain other of the efforts which the railroad made to comply with the order of the Interstate Commerce Commission, as, for instance, the trap car proposition—the ferry car proposition was suspended by the Interstate Commerce Commission and particularly by the fact that the action of the B. & O. Railroad Company is made with a suspension order indicating

that the Interstate Commerce Commission gave to this plan
186 its consideration and at least decided that it ought to be
permitted to become effective. That means the two tribunals
after consideration—one after complete consideration and the other
after incomplete consideration have approved a certain program.
We felt our original program was responsible. That program as it
would be modified, if it would be satisfactory, would involve the con-
tinuance of the 100-trip ticket at the rate of a cent and a half. It
would involve the establishment of a 100-trip ticket on the basis of
thirty-one days, that is, issued at any day in the month and that
doesn't mean even an increase of twenty-five cents a month because
if you multiply thirty-one by twelve you get three hundred and
seventy-two. The total increase on the twenty-five cent basis would
be \$3.00 for the whole year, but since you have 7/30ths of a month
left you must deduct from that \$3.00 7/30ths of the price of a
monthly ticket and that will increase at the most, between \$1.00 and
\$1.50. Of course, the time limit was six months. The other modi-
fication was the 10-strip ticket was reduced from a basis of two and
a quarter to two cents a mile.

(The Chairman:) Is that discontinued?

(Mr. Bikle:) No, sir; it became a 10-trip punch transportation ticket. I thought it proper to make this statement because in our testimony we shall refer from time to time to what we shall describe for convenience the Philadelphia basis and, of course, that basis will have no place in this case only that it indicates an attitude of readiness to do in this territory of the Northern Central what we have done in Pennsylvania under order and into New Jersey from Philadelphia on *prima facie* approval of the Interstate Commerce Commission.

I just want to say one word about New Jersey because that might be referred to. The only thing the State of New Jersey has done is this: They have refused to vacate the suspension order. They have not at all passed on the question finally what is to be done with the railroad's proposition, that the two tribunals have taken definite action, one final approval and one *prima facie approved*, but what we would be willing to establish here as our proposition.

187 (Mr. Bowie:) What consideration has been given to this by the Interstate Commerce Commission, as a point of fact? Isn't it a fact that you simply filed the tariffs there? You simply got permission to make changes and the Interstate Commerce Commission didn't suspend it?

(Mr. Bikle:) They didn't suspend it. You must remember that there was on file with the Interstate Commerce Commission tariffs permitting to do what we are here asking to be justified, that is, withdraw the 100-trip ticket; put the 10-trip ticket back on a two and a quarter cent basis. These tariffs would have gone into effect September 15th had they not been modified by the Interstate Commerce Commission suspending them. In that situation we sought permission from the Interstate Commerce Commission to modify these tariffs. Our tariffs were down there on Saturday; they may have suspended these tariffs on Monday if they had not had *prima facie* approval. In that connection it is perfectly proper to say, and I think the other side probably knows it, that the Interstate Commerce Commission was besought with the utmost persuasion by the commuters in New Jersey to suspend these tariffs.

(Mr. Darnall:) The Interstate Commerce Commission yesterday suspended the B. & O. tariffs.

(Mr. Bikle:) That only adds weight to the fact that they did not suspend ours.

(Mr. Bowie:) I don't know of any application made to the Interstate Commerce Commission for the suspension of rates by the commuters of New Jersey, nor do I know of any case and I don't believe my brother does—where you have propounded a tariff and filed another one and asked for reduction and this reduction didn't carry you below the old tariff. I don't know of an instance where the Interstate Commerce Commission of its own motion has ever suspended, and I have some familiarity with its practice, but it is significant that the B. & O., by virtue of their being interstate, protests to the Interstate Commerce Commission against this increase in rates, as testified to by Mr. De Long yesterday. The Interstate Commerce Commission has suspended that rate by a case had yesterday, and it is in the public press this morning. They have suspended that for the full period to April 30th. The other Baltimore 188 commuters are not in a position where they can go before the Interstate Commerce Commission, so if the Interstate Commerce Commission is to be held as a criterion of what is proper—they would suspend these if they had them before them.

(Mr. Bikle:) But the suspension order only covers travel in and out of Washington.

(Mr. Bowie:) Certainly, because they are only under their jurisdiction.

(Examination concluded.)

Mr. F. J. FELL, a witness of lawful age, produced on behalf of the respondent, having been duly sworn according to law, testified as follows:

Direct examination.

(By Mr. Bikle:)

Q. You have testified you are statistician of the Pennsylvania Railroad east of Pittsburgh?

A. I have.

Q. Now, in connection with this proceeding have you prepared a statement showing the passenger revenue and expenses of the Northern Central Railway?

A. I have.

Q. We would like to offer that statement as an exhibit.

(NOTE.)—Said paper just above referred to is here filed in evidence and marked "Company's Exhibit No. 4."

Q. Mr. Fell, this I believe is a statement from which you have already given certain figures?

189 A. It is.

Q. Will you explain why this statement begins with the year 1908?

A. These figures are for the calendar years as indicated on the statement. On July 1st, 1907, the Interstate Commerce Commission put into effect their new classification for expenses and earnings, etc. Our year begins December 31st—1908 was the first full calendar year we had under these classifications. 1908 was the first year in which we apportioned between passenger and freight.

Q. For what purpose is this division between passenger expenses and freight expenses kept?

A. So as to arrive at a reliable cost figure on transportation of the two classes of business.

Q. Was the division prepared with any reference to a proceeding of getting additional revenue?

A. This (indicating) was a standard report we had had for some time and is published in the annual report for Commissions and these figures are only abstracts from these reports.

Q. They were not prepared with reference to any proceeding before a Commission for the purpose of increasing revenue?

A. They were not.

Q. But merely for our own information?

A. That is the idea.

Q. This statement shows what difference of the operating revenue between freight and passenger?

A. The operating ratio on the freight business in 1908 was

75.87 per cent; on the passenger it was 92 per cent. In 1913 the freight took almost 90 per cent and the passenger 99 per cent. 99 cents out of \$1.00 leaves a very small portion to take care of the passenger part of the fixed charges, dividends or surplus.

190 (The Chairman:) These expenses don't include dividends or surplus?

(The Witness:) No, sir; just the operating expenses and taxes.

Q. Do they include anything on account of the mail and express business?

A. They do not.

Q. Mr. Fell, have you prepared a similar statement for the Baltimore division?

A. I have.

Q. What is the Baltimore division of the Northern Central?

A. The Baltimore division of the Northern Central runs from Baltimore to Harrisburg.

Q. We would like to file this as an exhibit.

(NOTE.)—Said paper just above referred to is here filed in evidence and marked "Company's Exhibit No. 5."

Q. And we have considered in this case from the year 1908, for the same reason as in the other?

A. Exactly.

Q. And some of these figures you also gave in your examination yesterday?

A. I did. The significant fact about this statement is that passengers show an increase of twenty-five, the mileage, twenty-nine and a half, the revenue, thirty-six, and the expenses, forty-one.

Q. Now, Mr. Fell, Colonel Bowie asked you as to information concerning the actual expenses of suburban trains in this vicinity. What do you find when you come to look into that question as to any study that had been made of that situation?

191 A. I found there had been a study made some time ago before this case was ever thought of, by Mr. Latrobe's office, as to the business between Parkton and Baltimore. I knew nothing of it at the time I testified yesterday.

Q. Is the statement that you have handed to Colonel Bowie this morning the statement that is based on that study?

A. That's the statement based on that study.

Q. Will you please take that statement and indicate what it shows with reference to the expenses per train mile of this suburban service?

A. The expenses per train mile subject to the criticism that I previously gave were 60.4 cents as compared to the revenue of the Baltimore-Parkton train of 54 cents. These expenses are not all of the amount or expenses which would be properly chargeable to this operation, they being expenses which are inherent in a train, the crews, repairs and lubrication, water, etc.

Q. Will you please state what expenses would be properly chargeable to that service which do not appear in that statement, the sum of it at any rate?

A. The maintenance of way; maintenance of track and bridges; proportion of administration expenses or general expenses; superintendence, dispatching of the trains and numerous other items.

(The Chairman:) What would be that total, approximately?

(The Witness:) Sixty cents.

(The Chairman:) As against fifty-four income?

(The Witness:) Yes, sir.

(The Chairman:) But you state the expenses don't include certain other items?

(The Witness:) Yes, sir.

(The Chairman:) What would they be?

192 (The Witness:) I can't say—

(The Chairman:) You know whether it would be one cent or twenty-five cents.

(The Witness:) Oh, yes. We did make a study like that out of Philadelphia which required over three months to prepare and found \$1.37 a train, but, of course, that would be a little more than the cost out of Baltimore, but relatively that gives you the figures to compare with.

(The Chairman:) Bringing it right down and adding it to the sixty cents, what would it make?

(The Witness:) Of course, that is only guesswork—

(The Chairman:) Yes.

(The Witness:) I should say anywhere from ninety cents to \$1.10; somewhere along there, taking in all expenses.

(The Chairman:) That would be the expenses of operating on this road a mile?

(The Witness:) Yes, sir; per train mile.

(The Chairman:) And the income fifty-four cents?

(The Witness:) Yes, sir; fifty-four cents.

Q. Mr. Fell, you have prepared a statement showing the revenue per train mile of the various trains on this Baltimore division?

A. Yes, sir.

(Mr. Bikle:) We would like to offer that in evidence.

(NOTE)—Said paper just above referred to is here filed in evidence and marked "Company's Exhibit No. 6."

Q. Now, what is the average revenue per passenger per train mile?

193 A. The average passenger earnings per passenger per train mile on the entire Northern Central Railway, \$1.08.

Q. What are the average expenses per passenger train mile?

A. The average passenger expenses per passenger train mile are \$1.07.

Q. So that all these local trains earn considerably less than the average passenger revenue per train mile on the Northern Central?

A. Yes, sir.

Q. Mr. Fell, do you know, as a matter of fact, whether there is any section of the Northern Central which has these commutation 100-trip tickets?

A. I don't know that.

Q. What can you say as to the relative expenses of the movement of a passenger local train and a through train, rather, I should say, a passenger suburban train and a passenger through train, such as a train from Baltimore to Harrisburg?

A. It is pretty hard to determine accurately what the cost is between the through and local, but on the local trains there are a great many stops to be made by the trains. As I testified yesterday, these stops cost considerable money. We made an estimate of the cost of stopping a train—one of those local trains—it was about twenty-nine cents. We also made an estimate as to the fuel consumption out of Philadelphia—at that point we had two trains, a local train and a through train. The through train made one stop and the local train made thirteen stops. The matter of consumption of coal after adjusting various differences and stops was about double on the local train what it was on a through train.

Q. Now, Mr. Fell, how about the use of a suburban train—did you procure those statements from the accounting department that Colonel Bowie referred to yesterday and asked us to produce?

A. I did.

194 Q. Did you know of their existence?

A. I did not.

Q. Using them as a basis, what did it show as to the use of the potential capacity of a train in this territory?

A. That showed the use of 31.2 of the potential capacity of a train.

Q. Will you produce these statements and show the Commission what they are and how you arrive at that percentage?

A. These trains—there were 10 trains taken for a period of six days—April 15th to 24th, excluding the 19th which was Sunday—which makes a total of 60 trains. I have given the total seat miles, that is capacity of the car in seats multiplied by the miles run which gives the potential capacity of the train. I have applied against that the actual use of the trains as determined by the records of the conductor and filed in our auditor's office. They show that the trains were used to an extent of 21.2 per cent. Some of the averages go down as low as six and seven-tenths per cent; some as high as 36 per cent, but the general average was 21.2 per cent. The history of the tickets on these trains—this is an original record from the office—are shown on these statements—it is the only copy I have.

Q. Mr. Fell, what is the average revenue per train mile of the Pennsylvania system?

A. The Pennsylvania Railroad?

Q. The Pennsylvania Railroad?

A. The average earnings?

Q. Yes?

A. \$1.30.

Q. So the average revenue per train mile on the Northern Central is substantially below that?

A. Substantially below the Pennsylvania Railroad.

195 Q. Have you prepared, Mr. Fell, a statement showing the different classes of passenger traffic on the Northern Central Railway for the year 1913?

A. I have.

(Mr. Bikle:) We desire to offer this in evidence.

(NOTE.)—Said paper just above referred to is here filed in evidence and marked "Company's Exhibit No. 7."

Q. Now, this statement divides the patrons of the company on what basis?

A. Divides between first class, excursion, commutation, mileage, special, second class, immigrants, clerical, employees and strip.

Q. Will you explain the relationship between the short statement at the top of the exhibit and the more elaborate statement below?

A. The statement here at the top is a summary of the statement below, with a slight fractional difference there between the commutation mileage—one shows 8.49 and one 8.50, by adding and deducting we obtained a half sufficiently to make a whole number.

Q. I think that's all I want to ask this witness?

Cross-examination.

(By Mr. Bowie:)

Q. Mr. Fell, you testified that you made a test on the Pennsylvania over the Philadelphia division, I believe?

A. Yes, sir.

Q. Between two trains and found that the coal consumption was double on the local than on the through train?

A. Yes, sir.

196 Q. Was that test made with the same equipment and same engine?

A. That was adjusted to the train weights.

Q. You didn't try the experiment of putting the engine you had on the through train and then putting it on the local?

A. I think, as my recollection is, that the same class of engine was used. Our engines are in classes and the same class would be the same.

Q. Have you ever heard of any two engines with the same coal consumption?

A. Of course, the human element enters into it, but these men—

Q. The mechanical element enters into it to the extent of twenty-five or thirty per cent?

A. I don't know, I know that these men were under supervision at the time the tests were made.

(The Chairman:) We might say, Mr. Bowie, that we had a case where we had the same crew on the same train and it takes about twice as much.

(Mr. Bowie:) But I also know the mechanical difference between two engines of the same type. I have seen them on special tests.

(The Witness:) I think it was estimated it took 115 pounds of coal to make a stop.

Q. Now, you stated that 21.2 per cent was used of the potential capacity of a train, 36 per cent being the maximum and I believe six per cent the minimum. Now, what is the possible maximum use of the potential capacity of a train in suburban service?

A. 100 per cent.

Q. How can you figure that if you take the number of miles and multiply it by the number of seats when you are distributing 197 passengers all along the road; you can't if you distribute passengers along the road possibly use 100 per cent potential capacity—

A. No, but your question was what was the ideal—

Q. No, but that is possible?

A. Possible, 100 per cent; possible but not probable.

Q. What would be the potential capacity of a train—the use I mean of the potential capacity of a train starting full, running ten miles and distributing one-tenth of its passengers at each mile?

A. I would have to know what was the capacity of the cars, etc. That can be figured out; I can't give it to you off the real.

Q. Approximately fifty per cent?

A. That's possibly correct.

Q. That would mean distributing your passengers along the road?

A. I would like to add to that if I might. This is a run of 14.9 miles, a comparatively short run. 21 per cent of the capacity was used. Now, on a run of 20 miles out of Philadelphia to Paoli which is a 30 per cent further run of the train, there was 25.5 per cent of the train used.

Q. Paoli is a junction point, is it not?

A. No, sir.

Q. Don't your people to West Chester and Pittsburgh—

A. No, sir; Frazier. That's beyond Paoli.

Q. Now, you have testified as to the proportion of freight to passenger revenues and expenses. Included in the passenger expenses—I am referring to Exhibit No. 4 now—and taking the year 1913, it shows \$2,606,944. Can you tell us what is included in these passenger expenses?

198 A. Our accounts are kept as you know, all under Interstate Commerce Commission methods. Our operating expenses are prescribed for by the Interstate Commerce Commission. The two million, six hundred and six thousand is the passenger proportion of the expenses under that classification applying our methods of a division of expenses between passenger and freight.

Q. Assuming the proportion is all right, I want to know what is included in that expense?

A. Expenses are made as to the classification of the Interstate Commerce Commission: 116-odd accounts.

Q. State some of those accounts?

A. The general heads are—I will give it to you under the classification of June 30th, maintenance of way, maintenance of equipment, transportation expenses, traffic expenses and general expenses.

Q. These are the five general sub-heads?

A. Yes, sir.

Q. Taking the question I asked you yesterday—I think it was you—as to the local passenger train that is delayed by a freight breakdown—is the extra expense allocated on the freight or passenger?

A. The passenger. On all the coal that is hauled over the Northern Central, the Company's free coal—is hauled on all freight service and the crew expenses and other expenses of those trains are charged against the freight and no cost to passenger although they may be carrying passenger coal. That might have also applied to other Company's free freight on the Northern Central. In other words, there are offsets.

Q. Now, the maintenance of the cost of upkeep of equipment: Does it cost any more to keep old cars in repair than it does new, I am now, of course, referring to wooden cars?

A. Passenger cars?

Q. Passenger cars?

199 A. I don't know what it costs to keep them up. Of course, the steel car is a new proposition, comparatively new. A proposition we don't know very much about, but relatively as to steel freight cars we are beginning to find out a few things about steel freight cars. We are having these steel freight cars come into our shops in large numbers requiring new sides and new bottoms, having been eaten by the action of the chemicals in the coal. What the condition in the passenger cars has been, nobody knows.

Q. The maintenance cost of the steel coach so far has been less than the wooden?

A. As a new proposition, there is no comparison.

Q. There is not?

A. No.

Q. What about the maintenance cost of new wooden coaches and old ones?

A. New wooden coaches and old ones?

Q. Yes?

A. A great deal depends, of course, upon the service in which a car is.

Q. Suburban service?

A. I can't answer that question.

Q. Does it cost more or less, the maintenance of an old coach against a new one?

A. There are a great many elements entering into that. It depends upon the condition in which the equipment has been kept. Like a vessel; if a vessel is kept in good condition and repairs made promptly the cost of maintenance is less than if the repairs are allowed to go. If we allow our ties and rails—if we can afford to do it, it don't cost as much to repair them — at a later day.

200 Q. We are talking about coaches now and maintenance of up-keep of passenger cars?

A. We try to, but there has been an increase in the number of passenger cars needing repairs.

Q. You certainly can tell us whether the cost of old equipment—old cars—whether they have to go into the shop more to be repaired than the new one, or not, can't you?

A. I don't know. I haven't any figures on that at all.

Q. Do you know whether you make any difference in the charge against your passenger expenses; depreciation upon the class of equipment used, or simply charge so much for each car?

A. For what?

Q. For maintenance of passenger equipment?

A. Increased maintenance and depreciation?

Q. Yes?

A. As far as the car—that is the question you asked me yesterday—we have what we call on the line east of Pittsburgh a passenger car repair pool in which the cars are used indiscriminately all over the road and the Northern Central might get Pennsylvania cars and vice versa because the Northern Central hasn't much equipment—only two hundred and some odd cars which it owns, and these repairs are made on all cars and divided on a pro rata basis all over the system on the basis of mileage. There is, however, a distinction made in the matter of depreciation. There is one rate for depreciation of wooden cars and one for depreciation of steel cars.

Q. I see, but, in other words, if the Northern Central were getting all the new cars—comparatively new cars of the Pennsylvania, it would be gaining over the other sections of the road, wouldn't it?

A. Not necessarily so.

201 Q. It would be paying only a fixed charge for maintenance of the car, and it would be getting a better equipment?

A. Yes, but the Northern Central Railway Company don't own any steel cars.

Q. I am not talking about steel cars—wooden cars.

(NOTE.)—Examination of witness here suspended for the purpose of taking a recess.

(After Recess.) (Second Day.)

F. J. FELL, whose testimony was suspended, resumed his examination as follows:

Cross-examination (continued).

(By Mr. Bowie:)

Q. Mr. Fell, will you look at Exhibit No. 2, Mr. De Long's Exhibit 2, and compute the ratio by including the strip tickets in the commutation total. In this exhibit, they included the strip tickets and the one way excursion tickets. Now I would like to know what the ratio would show if the strip ticket were included in the commutation tables?

A. Well, I didn't prepare that exhibit, Mr. Bowie.

Q. You did not, I beg your pardon. I thought Mr. Fell was the one man who did all your figuring. Are you familiar enough with railroad conditions to testify as to the attitude of the railroad con-

cerning passenger traffic, whether it is desirable to develop even though the ratio of direct receipts should be negligible?

A. You mean the cost proposition?

202 Q. No, I mean from the broad viewpoint of the railroad, as to whether it is desirable or not to the passenger business even though the passenger business of itself may not show a profit?

A. Well, that is the general situation of the railroad today with this increase. The passenger business will not bear its direct proportion of the fixed charges in the same relation that the freight does.

Q. Wasn't it testified to at the Philadelphia hearing that the Pennsylvania Railroad only earned about two per cent from its passenger business?

A. Yes, less than two per cent. That was an estimate of approximation which we so stated at that time very clearly as far as investment was concerned.

Q. I understand. Wouldn't that same ratio of business hold anywhere on the Northern Central?

A. I don't know. I have not worked any similar statement up for the Northern Central, but it is very apparent, if it shows a loss, there could be no return whatever no matter what the investment was, whether it was one dollar or ten million dollars.

Q. Does the passenger service of the railroad as such ever pay?

A. Well, up until very recently, the New Haven road was a very prosperous road, and about fifty per cent of its gross earnings are for passenger business. The New York Central's proportion of passenger business to its total business is much greater in its relation than they are here.

Q. Do they derive a proportionate revenue from their passenger business?

A. A proportionate return?

Q. A proportionate return?

A. Well, Mr. Elliott didn't think so.

203 Q. In other words, in the Pennsylvania Railroad experience, and taking that as a basis first, we haven't anything more direct as to the Northern Central, is that the passenger business must pay as a direct contributing factor?

A. It doesn't bear its proportion of the fixed charges of the railroad company.

Q. It never has, has it?

A. Not as far as my recollection goes. Of course, the demands upon it are greater today than ever before.

Q. Well now, as to the comparison with other roads generally, is it larger the proportion or smaller?

A. You mean the net?

Q. Yes?

A. Well, that is very hard to get at, for this reason. That there are not very many roads that make a separation of their operating expenses. The New York Central does not, and I don't think the New Haven does. I am not quite sure about that though. The Pennsylvania has for years made such separation.

Q. Their failure to separate would explain the reason why the New York Central shows a large percentage, wouldn't it?

A. Well, my testimony as to the New York Central was as to gross revenues in relation to all business.

Q. Gross revenues?

A. As to all business. That was the comparison I was trying to make.

Q. Now you spoke of the Paoli Division as to trains and the portion of use of potential capacity. Isn't the Paoli section, as a point of fact, the most profitable one of your suburban sections out of Philadelphia?

A. No, I wouldn't think so. Some years ago we made some studies in that respect for our own information, and the 204 main line service to Downingtown, I think it was, which is beyond Paoli, being a suburban zone there running out practically to Downingtown, showed a loss in the operation.

Q. And that is your most profitable suburban zone?

A. Well, that is a very densely populated zone, of course.

Q. And even in that you showed a loss?

A. Yes. That was the condition some years ago. Of course, that isn't today's condition. What today's condition is, I don't know.

Q. But it is the last check you have on conditions?

A. Yes.

Q. What is the difference between the potential capacity of a suburban train and that of a through train?

A. Well, some of the Harrisburg trains ran as high as 42 per cent, 42 7/10 per cent, if I recall correctly. I will give it to you accurately, I have it. I mean by the Harrisburg trains, Philadelphia to Harrisburg.

Q. Philadelphia to Harrisburg?

A. I will correct those figures. 37 3/10 per cent was Harrisburg and Philadelphia. From New York to Philadelphia is 52 7/10 per cent. That represents a series of twelve trains in each case.

Q. You have testified, have you not, to the use of the potential capacity on the local trains here?

A. Yes, that was 21 2/10 on the Parkton run.

Q. Now on the suburban, on the main line of the Pennsylvania, what was it?

A. Paoli?

Q. Paoli?

A. 25 5/10 per cent.

205 Q. Paoli is the end of your train run, is it?

A. Well, we have a great many runs originating or terminating at Paoli. Some of the suburban runs run beyond West Chester and Downingtown.

Q. What other sections besides the Paoli section that you have the—

A. (Interrupting:) I have West Chester, which is 31 7/10 per cent.

Q. That is, West Chester is how many miles?

A. About twenty-eight miles, I think twenty-six or twenty-eight.

Q. Now give us some of the shorter runs around there?

A. I don't believe we can come down any shorter than that because our suburban runs out of Philadelphia are Trenton, Paoli, West Chester, Wilmington and West Chester via the Media Division.

(Mr. Bikle:) You have Chestnut Hill on there?

A. Chestnut Hill is about twelve miles. That is 42 1/10 per cent. That compares with the 14 9/10 out from here to Parkton, which is 21 5/10 per cent.

Q. That is the most popular suburban section out of Philadelphia?

A. Oh, it is very densely populated, of course.

Q. Practically in the city?

A. Yes. That is, the eastern portion of it are.

Q. This test that you have testified to as being made on the division here, did you take in those six days in April? Did you take, did the local office take every train or only certain trains?

A. Well, they took certain trains.

206 Q. Do you know what trains they were?

A. Yes. They took five trains each way.

Q. What five?

A. I will give you the numbers.

(Mr. Darnell:) Can you give the time of the trains, too?

A. I will give you the numbers first, and then we will take the time, if that is agreeable to you.

(Mr. Darnell:) Certainly.

A. 101, 105, 109, 117 and 119. Now in the reverse direction.

108, 112, 116, 118 and 124. 101 leaves Baltimore at six o'clock

A. M., 105 leaves at twelve o'clock, 109 at 2:30, 117 at 4:30, 119 at 5:30. In the other direction. 108 arrives at Baltimore at 9:40

A. M., 112 at 2:15, 116 at 4:30, 118 at 6:05, 124 at 8:05.

(Mr. Bowie:)

Q. Have you any figures on the trains leaving Baltimore at 7:30

A. M. or 5:10 P. M.?

A. No, sir. I only have the trains I have given you.

Q. And none are the trains arriving at Baltimore at 8:45 or 8:46?

A. Those trains on the—you asked me yesterday if we had any studies of this kind, and this is the study we had. This was not especially prepared for this case. Of course, I worked the percentages for this case, but the foundation was for several other purposes.

Q. But no study has been made on the train arriving at Baltimore at 8:45?

A. Well, I don't know about that.

Q. And there has none been made on the train leaving at 5:10 P. M., and those are two of the most popular trains, 8:45 A. M. and 5:10 P. M. Now, was there any study made on those trains?

207 A. I haven't any and don't know of any.

Q. All right, sir.

A. I tried to get all the information I could on that question, and this is the only thing I could get so far.

Q. That is the only thing they gave you?

A. That was tried both from the Philadelphia end and the Baltimore end.

(Mr. Bikle:) They gave us what they had. We have all the other data in response to your questions.

(Mr. Darnell:) Only thing we wanted to bring out, Mr. Bikle, was that they have given us the poorest trains from the point of travel that they have on the road.

(Mr. Bikle:) What I mean, we got all that was available. Of course, you understand, we don't offer that as testimony.

(Mr. Carter:) And that study wasn't made for this case?

(Mr. Bowie:) I understand that it wasn't made for this case, but it is misleading.

(The Witness:) You have two good trains out of Baltimore. One is at 4:30, No. 117, and No. 119, which leaves at 5:30 P. M.

(Mr. Bowie:) The 5:10 interspersed is always packed.

(The Witness:) That is a Parkton train. These are only Cockeysville trains.

(Mr. Darnell): 3:20, 5:10 and 6:15. Those three trains are the best out-going trains on the road.

(The Witness:) Those trains are going all the way to Harrisburg, 6:20—

(Mr. Bikle:) But first, if it pleases the Commission, we would like to offer in evidence, not as proof of the fact we cited therein, but merely as indicative of the change of views that refer to 208 the action of the railroad with respect to their passenger affairs, the decision of the Interstate Commerce Commission of what is called the "five per cent case," the original decision, and it may possibly help. We can get a copy if they desire to supplement that by a later decision.

(NOTE.)—Paper above referred to was here filed in evidence and marked "Exhibit Railroad Company No. 8."

(Examination concluded.)

RICHARD J. DE LONG, a witness of lawful age, heretofore sworn in this case, produced on behalf of the respondent, testified as follows:

Direct examination.

(By Mr. Bikle:)

Q. Mr. De Long, what is your position with the Northern Central Railway?

A. Assistant General Passenger Agent.

Q. How long have you been connected with the Railroad Company?

A. With the Northern Central?

Q. Yes, sir?

A. I can't answer that question. I have been Assistant General Passenger Agent for almost two years.

Q. How long have you been connected with the Pennsylvania Railroad Company?

A. Thirty-one years.

Q. Mr. De Long, have you prepared a statement showing in detailed form the changes of fares under the new tariffs?

A. I have.

209 (Mr. Bikle:) We would like to offer this in evidence. That is simply a tabulation of what appears in the tariffs, but it gives convenient reference to those proposed changes.

(NOTE.)—Paper above referred to was here filed in evidence and marked "Exhibit Railroad Company No. 9."

Q. And now, Mr. De Long, will you please explain, first, which are one-way fares which you have in this territory?

A. They are many, $2\frac{1}{2}$ c. a mile.

Q. Is there any proposed change in that situation?

A. No, sir.

Q. What has been the situation with regard to what you call the excursion tickets?

A. They were sold at 2c. a mile.

Q. What is the proposed change there?

A. Double the one-way fares, unlimited excursion tickets, good until used.

Q. Are there any restrictions or limitations on the new tickets?

A. None whatever. They are equal to two one-way tickets good to stop off.

Q. Are the existing excursion tickets eliminated to what respect?

A. They are limited to a definite time, two days, and have no stop-over privileges, and the going coupon had to be used first. With the other ticket, either portion can be used first.

Q. On what basis was the so-called strip ticket issued?

A. At ten per cent less than the excursion fare, or $1\frac{8}{10}$ c. a mile.

Q. What is the proposal there?

210 A. The same ratio of reduction, ten per cent from the unlimited excursion fare.

Q. That is to say, it is now to be sold at $2\frac{1}{4}$ c.?

A. $2\frac{1}{4}$ c. a mile.

Q. And what other changes are proposed?

A. To limit it to three months instead of one month, and to issue a punch cancellation ticket instead of strip of ten tickets.

Q. What is the purpose of that change?

A. The change in time limit is to reduce—the object of reducing the time limit is to require the use of the tickets within a shorter time. The basis of selling these tickets at a ten per cent reduction, good for a year, was thought to be a little too much. I am quite sure in saying that originally, I don't know whether in this territory, but in through around Philadelphia, they were limited to three months.

Q. What was ordered in respect to this ticket with the Pennsylvania Commission?

A. That it be sold at 2c. per mile.

Q. Any modification of the time limit?

A. No, sir.

Q. What is the basis of the sixty-trip monthly ticket heretofore existing, and what is the proposed change?

A. The basis is 2c. per mile for three miles, or 6c. per trip, or \$3.60 for one month. The proposed change advances that 25c.

Q. And what and how much do you add to that ticket for each additional mile?

A. For each additional mile we add 1/2c. per mile, or 30c. for the month.

211 Q. Now will you explain what you have proposed, in respect to that ticket, to make a flat increase of 25c. rather than a mileage increase, that is, rather than the present with respect to the mileage?

A. Because of fixing commutation fares. We fixed a basic fare, which is taken at three miles. This is the fare that should be advanced or lowered if we had decided to lower the sixty-trip monthly fare, which would have been done in the same way, 25c., and the usual 30c. per mile added to it, for the reason that the minimum charge that we can make for a month's transportation is not fixed exactly on mileage. It is made a sufficient sum to cover the cost, to try to cover the cost of the transportation furnished.

Q. Well, why is it that the sixty-trip monthly ticket, in your judgment, should not increase with the mileage?

A. Because the commutation traffic is a highly specialized class of traffic. That is based on the transportation of the commuter between his home and his place of business or occupation. A large increase in this rate would defeat our ultimate object of increase in revenues, because if the commutation fare is inordinately increased it will check commutation traffic. We thought that a slight increase of 25c. would have no deterioration effect whatever on the volume of commutation traffic, and give us at least that much additional revenue.

Q. What is the basis of the school ticket and of the proposed change?

A. The school ticket is 46/60 of the monthly fare, and under the new basis the same proportionate advance.

Q. What modification was suggested in these two tickets by the Pennsylvania Commission, or rather ordered by the Pennsylvania Commission?

A. That instead of being sold for a calendar month, they be sold for a month of thirty days in addition to the date of issue.

Q. What about the one hundred and eighty trip ticket?

212 A. The one hundred and eighty trip ticket heretofore has been sold at three times the monthly fare less ten per cent. We thought that the charge for the commuters should be uniform, so much per month, and the new charge for the one hundred and eighty trip quarterly ticket is three times the monthly fare without any discount.

Q. What was the order of the Pennsylvania Commission in regard to that form of ticket?

A. That this ticket be sold for three months from date of issue, or after date of issue.

Q. So that on that order these three forms of tickets can be purchased on any day of the month?

A. Yes, sir.

Q. Now take the hundred trip ticket, which perhaps is the most interesting one to our friends. On what parts of our system has this ticket been in effect?

A. Prior to the 15th of December it was in effect between Philadelphia and its inter-suburban sections in Pennsylvania and in New Jersey, and between Baltimore and stations on the Baltimore Division in the State of Maryland.

Q. That is all, is it?

A. Up as far as Freeland. That's all, sir.

Q. Was there anything corresponding to that ticket out of any other city on our system?

A. No, sir.

Q. Now you have to some extent explained the reasons for our attitude towards that ticket. Will you please just state them briefly so that the record may be complete at this point?

A. Based on our experience and observation, we found that this ticket was largely used by traffic that should have—by classes of traffic that should have paid us the higher excursion and ten-strip fares. It was used to some extent by commuters, but very 213 largely by other traffic, and especially so if there were any considerable sized town, commercial town or manufacturing town in the suburbs. That is not true here, but it is true in Philadelphia. Are used very largely by what we would call business travel between Philadelphia and Trenton and towns of that kind, probably more so than by commuters. The average life of that ticket of four and one-half months around Philadelphia demonstrates that fact conclusively.

Q. What was ordered with respect to that ticket by the Pennsylvania Commission?

A. That it be sold at 1½c. per mile, good for six months.

Q. And what should be the minimum price for such a ticket?

A. The minimum price would be not less than double the monthly fare. In other words, the rate per trip should not be less than on the monthly ticket. It should be slightly more.

Cross-examination.

(By Mr. Bowie:)

Q. Mr. DeLong, conditions do not exist in Baltimore, as you have just testified, as they exist in Philadelphia. Assuming the life of a hundred trip ticket to be not more than two and one-quarter months, would you class the user of that as a commuter?

A. Not unless he makes commutation trips, that is, for residential purposes between his home and his place of daily occupation.

Q. You heard the testimony of the witnesses this morning?

A. Yes, sir.

Q. And a description of their occupations. Would you not call them commuters?

A. If they—

Q. (Interrupting.) Based on their testimony, how would you classify them. Their testimony in brief was that their tickets, 214 the average life of their monthly tickets was two and a quarter months?

A. Yes, sir.

Q. And they came to Baltimore daily, that is, they had no business at any other point?

A. Yes, sir. Well, we classify traffic according to the tickets they purchase.

Q. Well, if that is so, then they are commuters, are they not?

A. Oh, no.

Q. Well, you call them commuters on the back of the ticket?

A. Well, the term is a general term, as I said yesterday. The Interstate Commerce Commission, some years ago, called all reductions commutation, even the mileage ticket or an excursion ticket, but of late they have restricted it to the strict meaning of the word, and in the New Brunswick commutation case, which was the first one fully considered by a Commission, they acted upon them—laid down a strict definition of a commuter.

Q. And that was?

A. The same as mine, or mine is the same as theirs. Excuse me.

Q. Well, what is the strict definition of a commuter?

A. One who makes daily use of an agency of transportation. That is their language, between his home and his place of business or occupation. One who makes daily use of an agency of transportation.

Q. Well, you heard the testimony of Mr. Gaither this morning. He said he made five extra trips a week.

A. Yes, sir; he did.

Q. Is he still a commuter?

215 A. He is, I might say, the commuter of the commuters.

Q. Well, now what—

A. (Interrupting:) We have people like that.

Q. What reduction do you propose to give him?

A. Well, he would receive a substantial reduction if his monthly ticket were limited to thirty days, from date of issue. Then he could use it up in ten days if he wanted to at the least commutation fare in existence.

Q. Then what could he do for the other twenty?

A. Well, understand, under this new scheme, sixty trips are good for thirty-one days, but he can use all sixty of them in a week if he wants to and then buy another one. He can buy three or four of those tickets in one month.

Q. Unless he fits his trips to finish his tickets he loses?

A. Not under the new scheme.

Q. What do you call—

A. (Interrupting.) The monthly ticket, not for thirty days from date of issue.

Q. Is that in the tariff here?

A. No, sir.

Q. Well?

A. I thought you said what plans we have?

Q. I asked what plans you are now offering him by your tariff?

A. Well, your best plan would be this: To buy a sixty-trip monthly ticket for a calendar month, and for the extra trips in that month—Do you mean under the present way?

Q. Yes?

216 A. Buy a ten-trip ticket, unless the cost of those ten-trip tickets would be in excess of a second monthly ticket for the same month. That would be the best plan.

Q. In other words, you would have to pay a considerable increase for the same service as he is now getting under your new tariff?

A. I can only figure that if I know exactly how many trips he takes.

Q. Well, he doesn't know himself. He takes four to five extra trips a week.

A. Well, if he takes four or five extra trips a week he better buy two monthly tickets. That would be the cheapest for one calendar month.

Q. But you are offering him no tickets?

A. You mean four or five extra round trips?

Q. Yes?

A. Then he is a double commuter and he better buy two monthly tickets. We have men who do that.

Q. Is there any scheme whereby, assuming that he makes four extra trips a week, that he can buy tickets and use them all without paying an increased fare over the charge for monthly commutation?

A. I don't quite grasp that question.

Q. Have you any system of tickets under the tariff that you filed in November, 1914, whereby Mr. Gaither can make on an average of four trips extra a week, and all of those trips be at the same cost to him?

A. No, sir.

Q. There is not now?

A. You mean at the same cost per trip, I suppose?

217 Q. Same cost per trip?

A. No, sir. We have no such ticket. Of course, his requirements are unusual.

Q. Do you consider a man who travels fifty single trips or twenty-five round trips a month a commuter?

A. A real commuter?

Q. I mean commuter in the accepted sense, as being a man who, if you raise your rates up high, you drive out of the neighborhood. That is your testimony as I understand it?

A. If he desires twenty-five round trips a month, we sell him transportation for the month.

Q. You consider a man who travels twenty-five round trips a month a commuter, do you not?

A. Yes, sir; if he buys his transportation by the month.

Q. Regardless of what transportation he buys is he not entitled to be a commuter?

A. We can only classify him after he has bought his ticket.

Q. You have testified, Mr. DeLong, that you fix your commutation fare at approximately what will compensate you, and fix it as low as you can, because if it is too high the man won't commute?

A. That is correct.

Q. He will go on something else?

A. That is correct.

Q. Now, that creates, does it not, a class of men who ride on your road with a certain frequency, and you give those a special name, which we have been calling general commuters?

A. Well, we might call them commuters, but in the strict sense of the term, if you consider the establishment of a basis, we can't class them as a commuter.

218 Q. You wouldn't unless the man demanded it. Then you wouldn't offer the man who rides every day a special consideration? You only do it because he asks it?

A. If that man travels every day, and day by day and week by week and month by month, we offer him transportation by the month.

Q. You offer him transportation by the month?

A. Yes, sir. A month at a time.

Q. And suppose that he doesn't buy it by the month, but buys it by the day?

A. Then we make no reduction from ordinary fares.

Q. He is entitled to consideration though, and he doesn't get it, isn't that the idea?

A. We can only place them on the wholesale basis, not on the commutation basis, and in placing them on the wholesale basis, of course, he would follow the general practice of so much per mile.

Q. You concede, do you not, that the man who rides twenty-five rides a month, no matter what kind of a ticket he has, he may buy a single trip ticket if he makes twenty-five round trips a month, that he is a man who is entitled to some consideration at your hands if he wants it?

A. Did you restrict that to the suburban sections?

Q. I did?

A. Yes, sir. All these questions are to be understood as applying only to the suburban train service section.

(Mr. Darnell:) Same classes as we had on the stand this morning?

A. Yes, sir. Well, we provide special suburban service, I would never admit such an application to our other trains for long distance travel.

219 Q. Now the average revenue per passenger per mile is greater on the one hundred trip ticket than it is on the monthly ticket, is it not?

A. Oh, yes; mathematically so.

Q. So if a man buys instead of two monthly tickets he buys a

one hundred trip ticket and uses it within two months, the railroad makes money?

A. I beg your pardon.

Q. If he buys a one hundred trip ticket and uses it within two months instead of buying two monthly tickets the railroad profits by the transaction, doesn't it?

A. We get just the same money.

Q. Only the same money?

A. Well, the one hundred trip ticket did cost twice as much as the monthly ticket, so if the man used it up in two months we received the same amount of money if he bought the monthly tickets or the hundred trip ticket.

Q. But there are more rides on the monthly ticket?

A. Yes, sir.

Q. So your revenue per passenger per mile is higher in fact if he is on a hundred trip ticket?

A. Yes, sir. Makes it a little higher in this particular case. Of course, the average of miles is a little higher, too. It is 13 miles and $23/100$ as against $12/100$ on the sixty-trip ticket, but this added cost produces that difference of fifteen per cent.

Q. From your Exhibit No. 2, I see there is a difference of fifteen per cent in favor of the railroad if you have a daily rider who is riding on a hundred ride ticket.

A. There is a difference of $1\frac{1}{2}$ miles, but whether it is in favor of the railroad I am not prepared to say.

Q. Explain that please, because—

220 A. (Interrupting.) I figure that to be in favor of the man who buys the one hundred trip ticket.

(Mr. Darnell:) At the same time, the reverse order would be in favor of the railroad?

(The Witness:) Not necessarily so.

Q. If the average revenue per passenger per mile is one cent as compared with $85/100$ cents, then certainly it is fifteen per cent in favor of the railroad per passenger per mile, because that is the basis you are figuring on.

A. Not necessarily so.

(Mr. Bowie:) I am sorry our arithmetic don't fit.

(Mr. Bikle:) Isn't that a matter of argument?

(Mr. Bowie:) No, I can't see it, sir.

(The Witness): That shows how much revenue per mile those tickets represent, and it is to some extent based on the difference in the mileage, too. Now, I think you will find that in the Philadelphia section, if I may be allowed to tell you what the figures are in that section, there isn't that much difference between the two.

(Mr. Bowie:) I am not particularly interested, but you may put them in if you want to.

Q. Now, Mr. DeLong, you have testified as to the Philadelphia basis, I believe, the term we are using?

A. Yes, sir.

Q. That basis, according to the press accounts was arrived at a few days before the public hearing, is that true?

A. No, sir; not that I know of.

Q. The public press stated that there was a conference between the railroad officials and the Commission two days, I think it was, two days before the public hearing, and these figures were acted upon?

(Mr. Bikle:) I object.

(The Chairman:) State your objection.

221 (Mr. Bikle:) Because that is not what the public press stated.

(The Chairman:) Objection sustained.

(Mr. Bowie:) I don't want to argue the point—

(The Chairman:) (Interrupting.) We don't care what the Pennsylvania Commission did, and the conference with the railroad has nothing to do whatever with the reasonableness of the rates.

(Mr. Bowie:) The testimony has gone into the reasonableness of these, sir.

(The Chairman:) We sustain the objection.

Q. Mr. DeLong, in your experience in the passenger business, does not the development of suburban passenger traffic profit the railroad in the long run? Isn't it considered a desirable factor?

A. There is considerable doubt on that question today. I might say that before the advent of the trolley, the management of the Pennsylvania Railroad encouraged the development of suburban train service, and had every prospect of realizing a profit on that class of travel, but the conditions have very materially changed meanwhile by the advent of the trolley lines for suburban sections and the use of the automobile. As I explained before, these two have taken away the higher priced traffic as compared with the commutation traffic. Much more of the former than the latter. Our experience in that direction, speaking in a general way, has been such that we would be cautious about entering a new field and trying to develop a new suburban territory, but having in the past established a suburban train service and encouraged suburban development we will have to continue to furnish that service, and we are trying to make the best of the situation.

222 Q. There is no basis of comparison, proper basis of comparison, in your judgment, is there, between the mileage rates and the monthly ticket rates?

A. No, sir; none whatever.

Q. The services are too dissimilar to make any comparison readily, is that true?

A. The classes of traffic are entirely dissimilar.

Q. The class of traffic? *

A. Yes, sir. The train service does not radically differ. In some respects it does.

Q. Mr. DeLong, you have just said, I believe, that the question of developing new territory is one that you would approach with great diffidence?

A. Great caution; yes, sir.

Q. Isn't there an advantage to a railroad that can't be measured

in dollars and cents, that is a sufficient factor to impel them to pursue it by having passenger traffic? In other words, regardless of the fact that the passenger traffic apparently shows a loss or a failure to bear its proper proportion of fixed expenses, it is still a desirable factor in railroading, isn't it?

A. Very much so.

Q. So the mere fact that the railroad doesn't earn on its passenger business the same percentage as compared with its freight is not the criterion as to the desirability of the passenger business, is it?

A. The desirability compared with the freight?

Q. Yes, sir?

A. That is a difficult question to answer.

Q. I will put it in another way?

223 A. Yes, the comparison is not direct. I wouldn't know how to compare.

Q. Even if the passenger business showed no returns—

A. (Interrupting). All right.

Q. (Continuing:) Would it not, from a railroad standpoint, be desirable to still handle passengers?

A. Oh, yes; because if you had no passengers on your road and no inhabitants, you wouldn't have any freight business there.

Q. So there are other factors than dollars and cents on passenger returns that enter into the consideration?

A. Yes, sir, and they enter into any other question of traffic. They are all inter-related to a greater or less degree.

Q. When did the railroads begin this agitation or consider the matter of the increase in its passenger fares?

A. The question of securing increased revenue on passenger business is a constant question with us, and as I testified to yesterday, this question of the annual ticket, which seems to be the main discussion here, has been considered by our line for a number of years. We have had conferences of the various traffic officials in our department, a number of them, some three, four or five years ago.

Q. Now pardon me—

A. (Interrupting.) You asked us how long we have been considering. We have been considering this question at least four or five years.

Q. At least four or five years?

A. Yes, sir.

Q. Well, practically it was a result that began with the suggestion of the Interstate Commerce Commission that you had best raise your passenger rates, was it not?

224 A. You mean this change in the hundred trip ticket?

Q. No, I mean all the changes that you propose to make?

A. Well, I might say that that furnished the occasion.

Q. That furnished the occasion?

A. Yes, sir.

Q. And that suggestion was made how long ago?

A. I think it is about three months ago. About three or four months ago.

Q. And acting on that suggestion, you determined that you should

increase your passenger revenues, to increase the total to twenty-one per cent, did you not?

A. Oh, no. It just happens to be in that particular estimate, twenty-one per cent.

Q. Well, that you estimated as being sufficient, either to give you the amount of revenue or what the traffic would stand, is it not? Which was it?

A. Between Baltimore and Parkton; yes, sir.

Q. Now, if from any other source the railroad derives twenty-one per cent increase on its passenger earnings, they would be sufficiently compensated, would they not, on your own showing?

A. To secure how much per cent?

Q. Twenty-one per cent.

A. Oh, more than compensated.

Q. And therefore it would not be necessary to increase your rates at all?

A. You are speaking of twenty-one per cent on passenger revenue.

225 Q. If your passenger revenue is increased twenty-one per cent from another source, it wouldn't be necessary to increase the ticket charge at all, would it?

A. On this division?

Q. Yes?

A. Oh, yes; sure.

Q. Oh, it would?

A. Yes, sir. We couldn't increase this twenty-one per cent elsewhere and not at all here. That would never do.

Q. I am not talking about elsewhere, I mean your earnings from some other source, your earnings, passenger earnings from another source than the sale of tickets increased twenty-one per cent, that would be sufficient, wouldn't it? In other words, you need a twenty-one per cent increase on your passenger earnings?

A. I didn't say that.

Q. On the Baltimore Division, don't you?

A. We ought to have that; yes, sir.

Q. Well, now, if your package stamps are giving you that increase, there is no necessity for our tickets to be increased, is there?

A. Oh, yes.

Q. All right.

A. We consider classes of traffic as a whole, and we certainly need this much additional revenue if you want to consider this particular section by itself. I doubt whether with this addition the traffic will become self-sustaining between here and Parkton.

Q. It isn't necessary to become self-sustaining, is it?

A. It should be. If you can give me any reason why it shouldn't be self-sustaining, I would consider myself enlightened.

226 Q. Wouldn't it be desirable even if it were not self-sustaining?

A. Then that doesn't become a fair question, that becomes a policy question.

Q. I am asking you as one of the most expert railroad men I guess

I will ever have the opportunity to cross-examine, as to what your judgment is in this matter?

A. When it comes to a question of establishing a basis of fares, questions of that kind don't bear any part in it. If they do, it is inappreciable in establishing the fares on the Baltimore Division. We established fares in harmony with fares on similar suburban sections, like those around Philadelphia. We cannot consider this by itself, and Philadelphia by itself. In other words, if the basis applied around Philadelphia would make it more than self-sustaining, and the same basis on the Baltimore Division would not make it self-sustaining we wouldn't increase your fares on that account.

Q. You would not?

A. Oh, no.

Q. Wouldn't a fair test then, what you do in Philadelphia, be as to what would be done around Baltimore generally? In other words, looking at it from a scientific standpoint—

A. Yes, sir.

Q. Wouldn't it be a fairer test to charge what the B. & O. is charging and what the Western Maryland is charging, rather than take some other localities?

A. There would be no wide variance in the different sections around Baltimore you know—the section that we serve as being of the same importance as other sections served by other railroads.

Q. That being so, the rate would be approximately the same?

A. Yes, sir. There shouldn't be any wide variance.

Q. There should not?

227 A. No, if the service and all that are about the same, the train service.

Q. Assuming the train service to be about the same, the variance shouldn't be more than what per cent, did you say?

A. Oh, I wouldn't say. That doesn't mean that if some other railroad would do something that our judgment wouldn't approve, that we would have to do the same thing.

Q. No, I don't mean that. I mean if all other railroads entering Baltimore were carrying passengers at a cent and a half per mile, charging a cent and a half and you were charging then 85/100 of a cent, it would look like the other roads were charging too much?

A. No, it might mean that we were not charging enough. Either one or the other. Probably we ought to get together and compromise the matter.

Q. Are you familiar with what the Baltimore and Ohio charges per mile for its suburban service out of Baltimore?

A. Not specifically, but I think their basis for calculating sixty-trip monthly basis is about the same as ours. Now, whether their sales will earn the same revenue per mile, I don't know, but nearly all railroads have a basis of calculating sixty-trip monthly fares about the same as ours. There may be a variance. I have not the basis. Where they have added fifty cents for each additional mile instead of thirty cents, there may be variations like that. I don't know whether their basis is the same as ours or not.

Q. Mr. De Long?

A. Yes, sir.

Q. Another thing. I am sure you were under a misapprehension yesterday when you told us we could use a family ticket for the protection of our family in riding on the Northern Central, although you referred to the fact that there had only been thirty-four of them sold, and I examined your statement and I found that twenty-four were sold at Woodberry and ten at Melvale. Isn't it a fact that they are not on sale elsewhere on your road?

228 A. They were on sale prior to December 15th at all stations, at least the fares were effective. Now, the agent may not have had these tickets, but he could have obtained them if he had an application. The family ticket was sold at all stations. I will tell you where it is on the tariff.

Q. Look at your tariff.

(NOTE.)—Witness here refers to tariff and then hands it to Colonel Bowie, pointing out where the family ticket was effective.

Q. What commutation tickets are sold out of New York, Mr. De Long?

A. We sell out as far as New Brunswick. That is the territory you mean?

Q. Yes, the suburban territory?

A. We sell a sixty-trip monthly ticket and a fifty-trip family ticket.

Q. That sixty-trip monthly ticket, what do you sell at?

A. Prior to December 15th, the sixty-trip ticket from New York to Newark, the first station out, is twenty-five per cent higher than for the same distance on the Baltimore Division.

Q. On the family ticket?

A. Will you let me finish the monthly?

(Mr. Birkle:) You mean twenty-five cents higher, you don't mean twenty-five per cent.

A. Twenty-five cents higher than the same distance here today. It is on the same basis for the same distance here. The sixty-trip monthly ticket to Elizabeth was five cents higher than the same distance on the Baltimore Division, and it is now twenty cents less. Now the sixty-trip monthly fares to the territory beyond Elizabeth were fixed by order of the Interstate Commerce Commission three years ago, and they are lower for the same distance than what it would be here.

229 Q. In other words, the Interstate Commerce Commission fixed a lower rate?

A. To New Brunswick, and I want to explain that they fixed the fare at ten dollars. According to the scale which would have been twelve dollars and fifty cents, prior to the decision in commutation fares. In 1910, New Brunswick had a sixty-trip monthly fare of ten dollars, a hundred and eighty-trip quarterly fare of twenty-five dollars, and four quarterly tickets for a year at eighty-five dollars. The average of that commutation per trip was less considerably than the ten dollar fare fixed by the Commission. The other tickets were abolished, the quarterly and the annual tickets, so that the

revenue derived from commutation since that time is higher than what it was prior to the change.

Q. But the rate fixed by the Interstate Commerce Commission is lower than the rate for the same service here, rate per mile per passenger?

A. Yes, sir.

Q. Now, what do you sell that family ticket at?

A. That family ticket is sold at an average of—it varies a little fractionally you know, 1 6/10 cents a mile.

Q. And that you still continue to sell?

A. Oh, yes; yes, sir.

Q. You sell the family ticket for a year at two cents a mile?

A. Yes, but the strip tickets at 1 8/10 cents, and New York don't have the annual ticket either, the one hundred trip ticket.

Q. I understand.

A. New Brunswick commuters pay us more than they did before. They don't travel very much on the sixty-trip monthly ticket, you know.

230 Redirect examination.

(By Mr. Bikle:)

Q. One of the witnesses on the other side has referred to the commuter as a by-product. What are your comments on that theory?

A. If he means that the commuter is a by-product produced by the railroad company or carried by the railroad company without constitution as to the cost or anything of that kind, I bed to disagree with him.

Q. No, but as a by-product of transportation. I think that is what he meant?

A. Well, originally and today, in the sections where commutation is very small, commuters are carried on trains that were provided originally for other traffic, and they are taken care of on those trains. They have to *adopt* themselves to that train service, but when the commuter masses around a big center of population like Baltimore, he forms a much higher percentage of the total traffic. For instance, between here and Parkton, than he does between Parkton and Hagerstown, and he is no longer a negligible quantity at all. In fact, we have additional expense imposed upon us on his account, when we provide suburban train service, the maximum cost of which is established by the numbers of trains that we are required to run at the commutation hours.

Q. That is, when commutation travel develops, it requires a segregated and specific part of the transportation service to accommodate them?

A. Yes, sir.

Recross-examination.

(By Mr. Bowie:)

Q. And you further cater to that by taking off, if necessary, other trains in order to accommodate them?

A. We did that at Philadelphia.

(Mr. Bikle:) Now, if it please the Commission, yesterday Colonel Bowie asked us to produce figures as to the comparative revenue from package stamp service for September, October and November of 1914, as compared with the same months of 1913. I have just received those figures for the Northern Central, and they give us for the Baltimore Division for the three months of 1913, \$3,118.15. For the corresponding months of 1914, \$3,961.67, an increase of about \$843 for those three months. That analyzes about—

(Mr. Bowie, interrupting:) Something over twenty-five per cent.

(Mr. Bikle:) Yes. That would be about twenty-five per cent on that particular business. That gives it by stations, but I don't think you want that.

(Mr. Bowie:) No, I don't want that.

(Mr. Bikle:) That I would like to keep Colonel. I will send you a copy of it, but that is my only copy.

(Examination concluded.)

RALEIGH C. THOMAS, a witness of lawful age, produced on behalf of the complainant, having been duly sworn according to law, testified as follows:

Direct examination.

(By Mr. Bowie:)

Q. Mr. Thomas, you live at Ruxton, do you not?

A. During the summer; yes, sir.

Q. Have you lived there many years?

A. I think last summer was the twenty-fourth summer with one exception.

232 Q. You are familiar with the train service between Ruxton and Baltimore on the Northern Central?

A. Yes, sir.

Q. What trains coming in are the popular trains in the sense that — are most used by the commuters as far as observed by you. Take the time of arrival at Calvert Station as indicating the trains?

A. I think the train that reaches Calvert Station about 8:45 in the morning, the one reaching Calvert Station at 7:30, I think, especially in the summer time, is a very popular one. I say those two are the most popular.

(Mr. Darnell:) You mean in the evening?

A. Yes, the theater train.

Q. And in going out what trains are most used?

A. I say the one leaving Calvert Station, leaving at 5:10 in the evening, is the most popular, and the 6:20 P. M. is another very popular train.

(Mr. Darnell:) How about the 3:15?

A. The 3:15 is a Harrisburg train. That is a very popular train, too.

Q. You are also a commuter of the railroad yourself?

A. I am.

Q. What kind of ticket do you use?

A. One hundred trip.

Q. Why?

233 A. I find it very much more convenient and much less expensive to me the way I travel.

(NOTE.) —No cross-examination.

(Examination concluded.)

(Mr. Bowie:) If it pleases your Honors, the counsel for the commuters feel that it would be improper at this time to take up more time of the Commission in going into the question of the analysis of the management of the railroad in order to find out whether or not, by their operating expenses, etc., they are really entitled to an increase. Some of the questions I have asked indicated an intention to go into them, and that was our intention, but we realized the difficulty of not having any figures at our own disposal and having to go into the enemies' camp, and I don't think it is proper, in view of the importance of it in this matter, for us to go into that situation. We are content, therefore, to rest our case at the present point as far as testimony is concerned.

(NOTE.)—Statement of local passenger train service between Baltimore and Parkton by trains, here filed in evidence and marked "Company's Exhibit No. 10."

(The Commission adjourned.)

234

Demurrer.

(Filed 7th January, 1915.)

In the Circuit Court No. 2 of Baltimore City.

PENNSYLVANIA RAILROAD COMPANY, Lessee,

vs.

ALBERT G. TOWERS et al., Constituting the Public Service Commission of Maryland.

To the Honorable the Judges of the Circuit Court No. 2 of Baltimore City:

Albert G. Towers, E. Clay Timanus and W. Laird Henry, constituting the Public Service Commission of Maryland, defendants in this cause, by W. Cabell Bruce, the general counsel of the said Commission, demur to the whole of the bill of complaint against them filed in this cause;

(1) Because said bill does not set up any ground sufficient to

warrant this Honorable Court in granting any form of equitable relief prayed by said bill.

235 (2) Because there is no equity in said bill.

W. CABELL BRUCE,
General Counsel to the Public Service Commission of Maryland.

STATE OF MARYLAND,

Caroline County, To wit:

I hereby certify that on this 6th day of January, in the year 1915, before me, the subscriber, a notary public of the State of Maryland, in and for Caroline County aforesaid, personally appeared Albert G. Towers, E. Clay Timanus and W. Laird Henry, the defendants in the above entitled cause, and each made oath in due form of law that the aforesaid demurrer is not intended for delay.

As witness my hand and notarial seal hereunto set the day and year aforesaid.

[SEAL.]

GERTRUDE CROSSAN DEEN,
Notary Public.

236

Decree.

(Filed 8th January, 1915.)

In the Circuit Court No. 2 of Baltimore City.

PENNSYLVANIA RAILROAD COMPANY, Lessee,
vs.

ALBERT G. TOWERS et al., Constituting the Public Service Commission of Maryland.

The demurrer filed by the defendant in this cause to the bill of complaint therein and the motion for a preliminary injunction filed by the plaintiff therein having duly come on for hearing and having been duly argued by counsel and considered by the Court, it is this 8th day of January in the year nineteen hundred and fifteen by the Circuit Court No. 2 of Baltimore City ordered and decreed that said demurrer is hereby sustained and said motion overruled and the privilege of answering said bill having been waived by the plaintiffs, it is further ordered and decreed that said bill be and the same is hereby dismissed; and it is further ordered and decreed that the costs of the proceedings be paid by the plaintiff.

JAMES M. AMBLER.

237

Order to Enter Appeal.

(Filed 8th January, 1915.)

In the Circuit Court No. 2 of Baltimore City.

THE PENNSYLVANIA RAILROAD COMPANY, Lessee of the Northern Central Railway Co.

vs.

ALBERT G. TOWERS, et al., Constituting the Public Service Commission of Maryland.

Mr. Clerk: Please enter an appeal in this case to the Court of Appeals of Maryland on behalf of the plaintiff, the Pennsylvania Railroad Co., from the order and decree of the Court sustaining the demurrer to the bill and overruling the plaintiff's motion for a preliminary injunction, and dismissing the bill in this case, said order and decree being dated January 8th, 1915.

BERNARD CARTER & SONS,
JOHN J. DONALDSON,
Solicitors for Plaintiff.

238

Argument Covering Exhibits, Etc.

(Filed 9th January, 1915.)

In the Circuit Court No. 2 of Baltimore City.

PENNSYLVANIA RAILROAD COMPANY, Lessee,
vs.

ALBERT G. TOWERS, et al., Constituting the Public Service Commission of Maryland.

To save the cost of needless printing, it is agreed between the parties to this cause, that instead of transcribing and having printed in the Record in the Court of Appeals of Maryland Complainants' Exhibit No. 1, and Company's Exhibits Nos. 1 to 10, inclusive, mentioned in Plaintiff's Exhibit "Testimony," copies thereof may be folded in the printed Record before the argument of this case in the Court of Appeals of Maryland; and it is also agreed that all tariffs and tickets filed as Exhibits with the bill and also Exhibit No. 1 "Lease," filed with the bill in this case need not be transcribed and printed in the Record in the Court of Appeals of Maryland, but copies thereof may be folded in the Record before the argument in the Court of Appeals of Maryland; and all the aforesaid copies when folded in the Record as aforesaid, shall have the same force

and effect in all respects as if they had been transcribed and printed in said Record.

BERNARD CARTER & SONS,
JOHN J. DONALDSON,
Solicitors for Plaintiff.
W. CABELL BRUCE,
Solicitor for Defendants.

239 Which said appeal being by the Court here also granted,
it is thereupon ordered by the Court here that a transcript of
the Record of proceedings in the case aforesaid be transmitted to the
Court of Appeals of the State of Maryland under the rules thereof,
and the same is transmitted accordingly.

Test:

JOHN PLEASANTS,
Clerk of the Circuit Court No. 2 of Baltimore City.

In testimony whereof that the foregoing is a full and true transcript of the foregoing papers taken from the record of proceedings in the Circuit Court No. 2 of Baltimore City in the cause therein mentioned.

I hereto set my hand and affix the seal of the said Circuit Court No. 2 of Baltimore City on this 9th day of January, in the year of our Lord, nineteen hundred and fifteen.

Test:

[SEAL.]

JOHN PLEASANTS

JOHN LEAVENS,
Clerk of the Circuit Court No. 2 of Baltimore City.

Filed January 9th 1915.

240

Filed January 9th, 1915.

Supplement to Record No. 67.

In the Court of Appeals of Maryland.

THE PENNSYLVANIA RAILROAD COMPANY, Lessee of the Northern
Central Railway Company, Appellant,
vs.

ALBERT G. TOWERS, et al., Constituting the Public Service Commission of Maryland. Appellee.

Appeal from the Circuit Court No. 2 of Baltimore City.

Bernard Carter & Sons, John J. Donaldson, for Appellant.
W. Cabell Bruce, for Appellee.

(Here follow Plaintiff's Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 9, and 10, marked pages 241 to 252.)

Mu

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Mt.

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Sor

11.3

Re

13.5

Ecc

PLAINTIFF'S EXHIBIT NO. 1

(Filed Dec. 18, 1914.)

No. 149.

STATEMENT OF TICKET SALES BETWEEN BALTIMORE AND SUBURBAN STATIONS FROM WOODBERRY TO FREELAND AND GREEN SPRING JUNCTION, INCLUSIVE
 NOVEMBER, 1913, TO OCTOBER, 1914, INCLUSIVE, AND ESTIMATES OF EFFECT OF INCREASED FARES.
 (BASED ON SAME NUMBER OF TICKETS BEING SOLD.)

Miles—Station.	Inc. in Rev.			Inc. in Rev.			Inc. in Rev.			Inc. in Rev.			Inc. in Rev.				
	Tickets Sold.	Revenue.	Proposed Basis.	Philadelphia Basis.	Miles—Station.	Tickets Sold.	Revenue.	Proposed Basis.	Philadelphia Basis.	Miles—Station.	Tickets Sold.	Revenue.	Proposed Basis.	Philadelphia Basis.			
3.3— <i>Woodberry</i> :					4.3— <i>Melvale</i> :					5.3— <i>Clyburn</i> :							
One-Way	3,808	\$ 342.72	\$	\$	One-Way	1,744	\$ 191.84	\$	\$	One-Way	74	\$ 10.36	\$	\$			
Excursion	734	110.10	22.02	22.02	Excursion	1,658	298.44	67.32	67.32	Excursion	59	12.98	3.54	3.54			
Strip (14)	215	215.00	28.81	17.50	Strip (12)	547	547.00	102.84	17.51	Strip (11)	238	238.00	91.87	39.51			
50-Trip	24	79.20	18.00	10.80	50-Trip	10	43.00	6.50	.....	100-Ride	1	8.70	3.90	.50		
					60-Trip	35	141.75	8.75	7.35								
					100-Trip	6	48.60	10.80	3.00								
					180-Trip	2	21.90	3.90	3.66								
Woodberry Total		\$747.02	\$68.83	\$50.32	\$	Melvale Total		\$1,292.53	\$200.11	\$98.84	\$	Clyburn Total		\$270.04	\$99.31	\$43.55	\$
6.0— <i>Mt. Washington</i> :					6.6— <i>Bare Hills</i> :					7.1— <i>Hollins</i> :							
One-Way	4,342	\$ 651.30	\$	\$	One-Way	1,280	\$ 217.60	\$	\$	One-Way	906	\$ 163.08	\$	\$			
Excursion	304	72.00	18.24	18.24	Excursion	174	46.98	12.18	12.18	Excursion	675	195.75	47.25	47.25			
Strip	924	673.92	168.48	74.88	Strip	128	152.32	43.52	16.64	Strip	155	195.30	55.80	24.80			
46-Trip	1	3.45	.20	.08	100-Ride	12	111.60	72.00	6.00	60-Trip	10	48.00	2.50	.82			
100-Ride	35	315.00	157.50	17.50						100-Ride	32	307.20	211.20	33.00			
Mt. Washington Total		\$1,716.63	\$344.42	\$110.70	\$	Bare Hills Total		\$528.50	\$127.70	\$34.82	\$	Hollins Total		\$909.33	\$316.75	\$106.47	\$
7.9— <i>Sorrento</i> :					9.2— <i>Rockland</i> :					10.1— <i>Brooklandville</i> :							
One-Way	2	\$.40	\$	\$	One-Way	629	\$ 144.67	\$	\$	One-Way	3,046	\$ 947.96	\$	\$			
Excursion	7	2.24	.56	.56	Excursion	791	202.67	71.19	71.19	Excursion	3,475	1,424.75	382.25	382.25			
Strip	2	2.80	.80	.36	Strip	198	320.76	89.10	43.56	Strip	473	851.40	255.42	104.06			
					46-Trip	3	12.42	.72	.33	46-Trip	18	78.66	4.14	1.44			
					60-Trip	7	37.80	15.00	4.20	60-Trip	16	91.20	4.00	.96			
					100-Trip	36	388.80	356.40	108.00	100-Trip	66	752.40	792.00	247.50			
Sorrento Total		\$5.44	\$1.36	\$.92	\$	Rockland Total		\$1,197.12	\$532.41	\$227.28	\$	Brooklandville Total		\$4,146.37	\$1,437.81	\$736.21	\$
11.3— <i>Rogers</i> :					11.9— <i>Lystra</i> :					12.7— <i>Stevenson</i> :							
One-Way	1,958	\$ 567.82	\$	\$	One-Way	281	\$ 84.30	\$	\$	One-Way	2,585	\$ 827.20	\$	\$			
Excursion	2,925	1,345.50	351.00	351.00	Excursion	428	205.44	51.36	51.36	Excursion	2,716	1,385.16	353.08	353.08			
Strip	638	1,295.14	363.66	146.74	Strip	64	135.68	37.12	16.64	Strip	172	387.00	108.36	49.88			
46-Trip	18	\$2.80	3.60	.72	46-Trip	1	4.83	.22	.05	46-Trip	36	178.20	7.92	2.16			
60-Trip	2	12.00	.50	.10	60-Trip	1	6.30	.25	.06	60-Trip	1	6.45	.25	.03			
100-Ride	46	552.00	648.60	227.70	100-Ride	15	189.00	216.00	78.75	100-Ride	53	709.50	\$74.50	338.25			
Rogers Total		\$3,855.26	\$1,367.36	\$726.26	\$	Lystra Total		\$625.55	\$304.95	\$146.86	\$	Stevenson Total		\$3,493.51	\$1,344.11	\$743.40	\$
13.4— <i>Eccleston</i> :					14.3— <i>Chattolanne</i> :					14.9— <i>Garrison Forest</i> :							
One-Way	2,585	\$ 380.74	\$	\$	One-Way	1,355	\$ 487.80	\$	\$	One-Way	663	\$ 251.94	\$	\$			
Excursion	789	426.06	110.46	110.46	Excursion	678	393.24	94.92	94.92	Excursion	259	155.40	41.44	41.44			
Strip	1,086	2,638.98	684.18	271.50	Strip	159	408.63	106.53	46.11	Strip	74	199.80	53.28	20.72			
46-Trip	7	36.26	.54	.04	46-Trip	3	10.23	.57	.03	46-Trip	35	504.00	693.00	278.25			
60-Trip	17	114.75	4.25	.34	60-Trip	46	648.60	841.80	338.10	60-Trip							
100-Ride	42	567.00	718.20	277.20	100-Ride					100-Ride							
180-Trip	1	18.25	1.00	.08	180-Trip					180-Trip							
Eccleston Total		\$4,162.04	\$1,519.63	\$659.62	\$	Chattolanne Total		\$1,954.50	\$1,043.82	\$479.16	\$	Garrison Forest Total		\$1,111.14	\$787.72	\$340.41	\$

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PLAINTIFF'S EXHIBIT NO. 1—Continued.

Miles—Station.	Inc. in Rev.			Inc. in Rev.			Dec. in Rev.			Miles—Station.	Inc. in Rev.			Inc. in Rev.			Dec. in Rev.			Miles—Station.	Inc. in Rev.			Inc. in Rev.			Dec. in Rev.		
	Tickets Sold.	Revenue.	Proposed Basis.	Philadelphia Basis.			Philadelphia Basis.				Tickets Sold.	Revenue.	Proposed Basis.	Philadelphia Basis.			Philadelphia Basis.				Tickets Sold.	Revenue.	Proposed Basis.	Philadelphia Basis.			Dec. in Rev.		
15.2— <i>Turnpike</i> :										15.6— <i>Green Spring Jet.</i> :										7.4— <i>Brightside</i> :									
One-Way.	251	\$ 93.58	\$.....	\$.....	\$.....	\$.....	One-Way.	13	\$ 5.07	\$.....	\$.....	\$.....	\$.....	One-Way.	258	\$ 49.02	\$.....	\$.....	\$.....	One-Way.	258	\$ 49.02	\$.....	\$.....	\$.....	\$.....	\$.....	\$.....	\$.....
Excursion.	34	20.74	5.10	5.10	5.10	5.10	Excursion.	6	3.78	.90	.90	.90	.90	Excursion.	253	75.90	20.24	20.24	20.24	Excursion.	253	75.90	20.24	20.24	20.24	20.24	20.24	20.24	20.24
Strip.	33	89.10	23.76	23.76	23.76	23.76	100-Ride.	5	73.50	102.00	43.50	43.50	43.50	Strip.	252	340.20	90.72	32.76	32.76	Strip.	252	340.20	90.72	32.76	32.76	32.76	32.76	32.76	32.76
46-Trip.	1	5.52	.23	.23	.23	.23	100-Ride.							46-Trip.	18	68.40	3.60	1.26	1.26	46-Trip.	18	68.40	3.60	1.26	1.26	1.26	1.26	1.26	1.26
100-Ride.	18	259.20	356.40	151.20	151.20	151.20								100-Ride.	21	207.90	151.20	25.20	25.20	100-Ride.	21	207.90	151.20	25.20	25.20	25.20	25.20	25.20	25.20
Turnpike Total		\$468.14	\$385.49	\$167.56	\$.....	\$.....	Green Spring Jet. Total		\$82.35	\$102.90	\$44.40	\$.....	\$.....	Brightside Total		\$741.42	\$265.76	\$79.46	\$.....	Brightside Total		\$741.42	\$265.76	\$79.46	\$.....	\$.....	\$.....	\$.....	\$.....
7.8— <i>Lake</i> :							8.4— <i>Ruxton</i> :							9.2— <i>Riderwood</i> :						9.2— <i>Riderwood</i> :									
One-Way.	1,182	\$ 236.40	\$.....	\$.....	\$.....	\$.....	One-Way.	5,602	\$1,176.42	\$.....	\$.....	\$.....	\$.....	One-Way.	5,193	\$1,194.39	\$.....	\$.....	\$.....	One-Way.	5,193	\$1,194.39	\$.....	\$.....	\$.....	\$.....	\$.....	\$.....	\$.....
Excursion.	1,038	331.52	82.88	82.88	82.88	82.88	Excursion.	10,515	3,575.10	841.20	841.20	841.20	841.20	Excursion.	8,483	3,138.71	763.47	763.47	763.47	Excursion.	8,483	3,138.71	763.47	763.47	763.47	763.47	763.47	763.47	763.47
Strip.	509	712.60	203.90	81.44	81.44	81.44	Strip.	2,354	3,601.62	847.44	353.10	353.10	353.10	Strip.	1,567	2,538.54	706.15	344.74	344.74	Strip.	1,567	2,538.54	706.15	344.74	344.74	344.74	344.74	344.74	344.74
46-Trip.	7	27.37	1.68	.77	.77	.77	46-Trip.	38	153.14	8.36	3.04	3.04	3.04	46-Trip.	29	130.06	6.08	2.03	2.03	46-Trip.	29	130.06	6.08	2.03	2.03	2.03	2.03	2.03	2.03
60-Trip.	13	66.30	3.25	1.04	1.04	1.04	60-Trip.	155	813.75	38.75	26.35	26.35	26.35	60-Trip.	222	1,198.80	55.50	15.54	15.54	60-Trip.	222	1,198.80	55.50	15.54	15.54	15.54	15.54	15.54	15.54
100-Ride.	47	479.40	366.00	70.50	70.50	70.50	100-Ride.	300	3,150.00	2,520.00	630.00	630.00	630.00	100-Ride.	237	2,559.60	2,346.30	711.00	711.00	100-Ride.	237	2,559.60	2,346.30	711.00	711.00	711.00	711.00	711.00	711.00
180-Trip.	2	27.50	4.60	3.58	3.58	3.58	180-Trip.	28	396.20	65.80	50.68	50.68	50.68	180-Trip.	13	189.80	30.55	23.53	23.53	180-Trip.	13	189.80	30.55	23.53	23.53	23.53	23.53	23.53	23.53
Lake Total		\$1,881.09	\$632.01	\$240.21	\$.....	\$.....	Ruxton Total		\$12,866.23	\$4,321.55	\$1,904.37	\$.....	\$.....	Ruxton Total		\$10,939.90	\$3,907.05	\$1,860.31	\$.....	Ruxton Total		\$10,939.90	\$3,907.05	\$1,860.31	\$.....	\$.....	\$.....	\$.....	\$.....
10.5— <i>Lutherville</i> :							11.7— <i>Timonium</i> :							12.9— <i>Padonia</i> :						12.9— <i>Padonia</i> :									
One-Way.	5,439	\$ 1,468.53	\$.....	\$.....	\$.....	\$.....	One-Way.	2,654	\$ 796.20	\$.....	\$.....	\$.....	\$.....	One-Way.	81	\$ 28.73	\$.....	\$.....	\$.....	One-Way.	81	\$ 28.73	\$.....	\$.....	\$.....	\$.....	\$.....	\$.....	\$.....
Excursion.	9,766	4,101.72	1,171.92	1,171.92	1,171.92	1,171.92	Excursion.	2,019	948.93	202.47	202.47	202.47	202.47	Excursion.	159	82.68	22.26	22.26	22.26	Excursion.	159	82.68	22.26	22.26	22.26	22.26	22.26	22.26	22.26
Strip.	1,432	2,706.48	773.28	300.72	300.72	300.72	Strip.	232	480.24	146.18	62.64	62.64	62.64	Strip.	113	320.92	85.88	36.16	36.16	Strip.	113	320.92	85.88	36.16	36.16	36.16	36.16	36.16	36.16
46-Trip.	16	71.84	3.36	.96	.96	.96	46-Trip.	5	23.60	1.15	.35	.35	.35	46-Trip.	2	11.28	.42	.04	.04	46-Trip.	2	11.28	.42	.04	.04	.04	.04	.04	.04
60-Trip.	255	1,491.75	63.75	12.75	12.75	12.75	60-Trip.	52	319.80	13.00	2.08	2.08	2.08	60-Trip.	18	132.30	4.50	1.50	1.50	60-Trip.	18	132.30	4.50	1.50	1.50	1.50	1.50	1.50	1.50
100-Trip.	298	3,486.00	3,754.80	1,200.00	1,200.00	1,200.00	100-Trip.	57	701.10	837.90	299.25	299.25	299.25	100-Trip.	15	220.50	719.50	135.00	135.00	100-Trip.	15	220.50	719.50	135.00	135.00	135.00	135.00	135.00	135.00
180-Trip.	4	63.20	10.00	7.60	7.60	7.60	180-Trip.	6	116.70	17.40	13.08	13.08	13.08	180-Trip.						180-Trip.									
Lutherville Total		\$13,390.12	\$5,777.11	\$2,700.85	\$.....	\$.....	Timonium Total		\$3,286.47	\$1,264.28	\$629.76	\$.....	\$.....	Timonium Total		\$122.61	\$38.76	\$28.41	\$.....	Timonium Total		\$122.61	\$38.76	\$28.41	\$.....	\$.....	\$.....	\$.....	\$.....
13.5— <i>Texas</i> :							14.9— <i>Cockeysville</i> :							15.8— <i>Ashland</i> :						15.8— <i>Ashland</i> :									
One-Way.	1,967	\$ 638.78	\$.....	\$.....	\$.....	\$.....	One-Way.	6,176	\$2,346.88	\$.....	\$.....	\$.....	\$.....	One-Way.	572	\$ 228.80	\$.....	\$.....	\$.....	One-Way.	572	\$ 228.80	\$.....	\$.....	\$.....	\$.....	\$.....	\$.....	\$.....
Excursion.	4,008	2,164.32	561.12	561.12	561.12	561.12	Excursion.	9,589	5,753.40	1,534.24	1,534.24	1,534.24	1,534.24	Excursion.	873	557.72	139.68	139.68	139.68	Excursion.	873	557.72	139.68	139.68	139.68	139.68	139.68	139.68	139.68
Strip.	179	434.97	112.77	48.33	48.33	48.33	Strip.	760	2,052.00	517.20	212.80	212.80	212.80	Strip.	113	320.92	85.88	36.16	36.16	Strip.	113	320.92	85.88	36.16	36.16	36.16	36.16	36.16	36.16
46-Trip.	44	227.92	9.68	3.52	3.52	3.52	46-Trip.	35	193.20	8.05	1.40	1.40	1.40	46-Trip.	2	11.28	.42	.04	.04	46-Trip.	2	11.28	.42	.04	.04	.04	.04	.04	.04
60-Trip.	178	1,201.50	44.60	3.56	3.56	3.56	60-Trip.	312	2,246.40	78.00	3.12	3.12	3.12	60-Trip.	18	132.30	4.50	1.50	1.50	60-Trip.	18	132.30	4.50	1.50	1.50	1.50	1.50	1.50	1.50
100-Trip.	49	661.50	837.90	340.75	340.75	340.75	100-Trip.	244	3,513.00	4,831.20	1,939.80	1,939.80	1,939.80	100-Trip.	15	220.50	719.50	135.00	135.00	100-Trip.	15	220.50	719.50	135.00	135.00	135.00	135.00	135.00	135.00
180-Trip.	2	36.50	5.50	4.12	4.12	4.12	180-Trip.	6	116.70	17.40	13.08	13.08	13.08	180-Trip.						180-Trip.									
Texas Total		\$5,395.49	\$1,571.47	\$961.40	\$.....	\$.....	Cockeysville Total		\$16,222.18	\$7,016.09	\$3,704.44	\$.....	\$.....	Cockeysville Total		\$1,471.52	\$949.98	\$310.88	\$.....	Cockeysville Total		\$1,471.52	\$949.98	\$310.88	\$.....	\$.....	\$.....	\$.....	\$.....
17.8— <i>Phoenix</i> :							19.6— <i>Sparks</i> :							20.5— <i>Glencoe</i> :						20.5— <i>Glencoe</i> :									
One-Way.	1,448	\$ 651.60	\$.....	\$.....	\$.....	\$.....	One-Way.	1,971	\$ 965.79	\$.....	\$.....	\$.....	\$.....	One-Way.	1,824	\$ 948.48	\$.....	\$.....	\$.....	One-Way.	1,824	\$ 948.48	\$.....	\$.....	\$.....	\$.....	\$.....	\$.....	\$.....
Excursion.	2,139	1,532.88	383.22	383.22	383.22	383.22	Excursion.	2,493	1,969.47	473.67	473.67	473.67	473.67	Excursion.	2,438	1,999.16	536.36	536.36	536.36	Excursion.	2,438	1,999.16	536.36	536.36	536.36	536.36	536.36	536.36	536.36
Strip.	90	288.00	76.50	32.40	32.40	32.40	Strip.	154	540.54	138.60	63.14	63.14	63.14	Strip.	475	1,752.75	470.25	194.75	194.75	194.75	Strip.	475	1,752.75	470.25	194.75	194.75	194.75</		

PLAINTIFF'S EXHIBIT NO. 1—Concluded.

Miles—Station.	Inc. in Rev.			Inc. in Rev.			Dec. in Rev.			Miles—Station.	Inc. in Rev.			Inc. in Rev.			Dec. in Rev.		
	Tickets Sold.	Revenue.	Proposed Basis.	Philadelphia Basis.			Tickets Sold.	Revenue.	Proposed Basis.	Philadelphia Basis.			Tickets Sold.	Revenue.	Proposed Basis.	Philadelphia Basis.			
26.5—White Hall:										27.2—Graystone:									
One-Way.	2,423	\$1,023.41	\$.....	\$.....	\$.....	\$.....	One-Way.	206	\$ 140.08	\$.....	\$.....	\$.....	One-Way.	1,636	\$1,177.42	\$.....	\$.....	\$.....	
Excursion.	2,822	2,091.32	700.16	700.16	.....	.....	Excursion.	245	267.05	66.15	66.15	.....	Excursion.	1,843	2,137.88	516.04	516.94	.....
Strip.	186	887.22	234.36	98.58	.....	.....	Strip.	42	206.22	50.82	22.26	.....	Strip.	124	642.32	161.20	71.92	.....
46-Trip.	12	98.04	2.76	.....	.60	.....	60-Trip.	2	21.60	.50	.....	.42	46-Trip.	18	155.34	3.96	.....	1.26
60-Trip.	32	340.80	8.00	.....	3.52	.....	100-Trip.	5	108.00	198.00	96.00	.....	60-Trip.	5	56.25	1.25	.....	.65
100-Trip.	63	1,341.90	2,457.00	1,162.35	.....	.....							100-Trip.	46	1,035.00	1,899.80	952.20	.....
White Hall Total.		\$7,282.69	\$3,492.28	\$2,051.09	\$4.12	Graystone Total.		\$742.95	\$315.47	\$184.41	\$42	Parkton Total.		\$5,204.71	\$2,582.25	\$1,540.16	\$1.91		
30.1—Walker:						31.5—Bentley:							34.3—Freeland:						
One-Way.	97	\$ 73.72	\$.....	\$.....	\$.....	One-Way.	277	\$ 218.83	\$.....	\$.....	\$.....	One-Way.	735	\$ 632.10	\$.....	\$.....	\$.....		
Excursion.	88	106.48	27.28	27.28	.....	Excursion.	257	323.82	\$2.24	82.24	.....	Excursion.	631	870.78	214.54	214.54	.....	
Strip.	6	32.40	8.64	3.72	.....	Strip.	50	283.50	72.00	31.50	.....	Strip.	287	1,770.79	450.59	198.03	.....	
60-Trip.	3	35.10	.75	.....	.42	46-Trip.	1	9.32	.23	.....	.08	100-Trip.	31	809.10	1,590.30	785.85	.....	
100-Trip.	2	46.80	90.00	43.50	.....	60-Trip.	1	12.15	.25	.....	.16							
Walker Total.		\$294.50	\$126.67	\$74.50	\$.42	Bentley Total.		\$896.22	\$217.52	\$159.64	\$.24	Freeland Total.		\$4,082.77	\$2,255.43	\$1,198.42	\$.		

SUMMARY—ALL STATIONS.

	Revenue.	Proposed Basis.	Philadelphia Basis.
	Increase.	Increase.	
One-Way.	\$21,805.65	\$.....	\$.....
Excursion.	42,648.43	10,987.47	10,987.47
Strip.	29,727.82	7,653.48	3,204.54
46-Trip Monthly School.	1,637.48	76.37	16.10
50-Trip Family.	122.20	24.50	10.80
60-Trip Monthly.	9,632.40	382.25	66.06
100-Trip Annual.	28,144.50	36,484.00	13,816.00
180-Trip Quarterly.	962.00	153.15	117.08
Totals.	\$134,716.48	\$55,755.22 or 42%	\$28,218.05 or 21%

NOTES:

This statement is calculated on a strictly mathematical basis; that is, that during the year the same number of tickets will be sold and the same number of each kind. Instead of the limited excursion ticket, the same number of passengers will buy the unlimited excursion ticket at double the one-way fare. Instead of the 100-trip annual ticket, the same number of passengers will purchase ten times as many ten-trip tickets. Instead of the 50-trip family or firm ticket, passengers will buy five times as many 10-trip tickets. In another statement we give our estimate of the actual results in revenue, instead of the theoretical results mathematically calculated.

On the Philadelphia basis the 60-trip monthly ticket is limited to thirty days from date of issue. This will give the purchaser 372 days or round trips for twelve monthly tickets; under the old system the purchaser of twelve monthly tickets secured 360 days or round trips. This is an increase of twelve days or 12/360, or 1/30. Therefore, in using the Philadelphia basis, the Philadelphia rate per month should be reduced 1/30. The same applies to the 46-trip monthly school ticket. 10-trip tickets on the Philadelphia basis are calculated at two cents per mile, with minimum of 75¢, and 100-trip six-month tickets are calculated at one cent and one-half per mile, with minimum of double the new monthly fares, and not to exceed ten times the new 10-trip fare.

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PLAINTIFF'S EXHIBIT NO. 2.

(Filed Dec. 18, 1914.)
No. 150.TICKET SALES ON THE CENTRAL DIVISION (FORMERLY NORTHERN CENTRAL RAILWAY) BETWEEN WOODBERRY AND FREELAND—
INCLUDING GREEN SPRING BRANCH FOR 12 MONTHS, NOVEMBER, 1913, TO OCTOBER, 1914, INCLUSIVE.

Number of Tickets Sold.	Number of Trips Represented by Tickets Sold.	Revenue.			Average Revenue Per Passenger.	Passengers	One Mile.	Average Haul Per Passenger.	Average Revenue Per Passenger Per Mile.	
		Number.	Per Ct.	Amount.						
46-Trip.	322	14,812	2.13	\$ 1,637.48	1.22	11.05	194,787	2.20	13.15	0.84
50-Trip.	34	1,700	0.24	122.20	0.00	7.18	6,110	0.07	3.59	2.00
60-Trip.	1,476	88,560	12.74	9,632.40	7.15	10.88	1,130,754	12.78	12.77	0.85
100-trip.	2,126	212,600	30.59	28,144.50	20.89	13.24	2,813,570	31.82	13.23	1.00
180-Trip.	62	11,160	1.61	962.00	0.71	8.62	113,130	1.28	10.14	0.85
Total Commutation.	328,832	47.31		\$ 40,498.58	30.06	12.31	4,258,351	48.15	12.95	0.95
One-Way.	67,507	67,507	9.72	\$ 21,805.65	16.19	32.30	860,939	9.74	12.75	2.53
Excursion.	78,904	157,928	22.72	42,684.43	31.68	27.03	2,117,509	23.95	13.41	2.02
*Strip.	13,864	140,832	20.25	29,727.82	22.07	21.11	1,006,451	18.16	11.41	1.85
Other than Commutation.	366,267	52.69		\$ 94,217.90	69.94	25.72	4,584,890	51.85	12.52	2.05
Total All Tickets.	695,099	100%		\$134,716.48	100%	19.38	8,843,250	100%	12.72	1.52

* Generally sold in strips of 10; but near Baltimore they are sold in strips of 11, 12 and 14 for \$1.00.

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PLAINTIFF'S EXHIBIT NO. 3.

(Filed Dec. 18, 1914.)

No. 151.

ESTIMATES OF INCREASED REVENUE

	Total Sales.	Proposed Basis.	Philadel- phia Basis.
One-Way Tickets.....	\$21,805.65		
Excursion Tickets.....	42,684.43		
It is estimated that with 10-trip tickets at 2½c per mile, one-half the traffic will purchase 10 trip tickets. Increase 12½% on \$21,342.22.....		\$2,667.77	
The other half one-way fares. Increase 25% on \$21,342.22.....		5,335.54	
With trip tickets at 2c per mile. It is estimated that three-fourths of the traffic will move on these tickets. No increased revenue. The other one- fourth \$10,671.11, will increase 25%.....			
Total increase on excursion tickets.....			\$2,667.77
Strip Tickets.....	29,727.82	\$8,003.31	\$2,667.77
46-Trip Monthly School Tickets.....	1,637.48	7,653.48	\$3,204.54
50-Trip Family Tickets.....	122.20	70.37	16.10
60-Trip Monthly Tickets.....	9,632.40	24.50	10.80
		382.25	66.06
100-Trip Annual Tickets (2,126 tickets). Say $\frac{1}{4}$ were used in two months. This means an increase of 50 cents per ticket for 531 tickets or.....	28,144.50	\$265.50	\$ 256.05
Say $\frac{1}{4}$ were used in three months, average of new 60-trip monthly is \$6.78, and of 100-trip, \$13.24, three monthly tickets cost \$20.34. Increase \$7.10 per ticket, for 531 tickets, or.....		3,770.10	3,518.00
On Philadelphia basis, increase 50% on \$7,036, or.....		8,795.31	7,036.25
Say $\frac{1}{4}$ in five months and $\frac{1}{4}$ in 8 months, 1,004 tickets; revenue, \$14,072.50; average, 1c per mile. We estimate one-half of this will not materialize. New 10-trip, 2½c per mile, as proposed; increase, 125% of \$7,036.25....		\$12,830.91	\$10,810.90
On Philadelphia basis, 2c per mile, 100%, \$7,036.25.....		\$ 163.15	\$ 117.08
Total increase on 100-trip tickets.....	962.00	\$134,716.48	\$29,127.97 or 21%
Total estimated increase, all tickets.....			\$16,803.25 or 13%

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PLAINTIFF'S EXHIBIT NO. 4.

(Filed Dec. 18, 1914.)

No. 152.

NORTHERN CENTRAL RAILWAY COMPANY.

	Freight.		Passenger.		Ratio of Expenses to Revenues.	
	Revenues.	Expenses. (Inc. Taxes.)	Revenues.	Expenses. (Inc. Taxes.)	Fr.	Pass.
1908.....	\$ 8,665,421	\$6,574,779	\$1,975,921	\$1,824,447	75.87	92.33
1909.....	9,510,156	7,221,237	2,008,403	2,025,133	75.93	96.51
1910.....	9,854,320	8,017,157	2,243,489	2,364,687	81.36	105.40
1911.....	9,745,493	7,961,403	2,302,021	2,372,268	\$1.69	103.05
1912.....	9,712,779	8,318,321	2,380,876	2,322,560	\$5.64	97.55
1913.....	10,123,918	9,087,829	2,628,048	2,606,944	89.77	99.20

	Passengers.	Pass. One Mile.	Average Per Passenger Per Mile.		
			Revenue.	Expenses.	Net.
1908.....	4,498,258	98,411,961	2.008c	1.854c	0.154c
1909.....	4,816,211	105,705,834	1.985c	1.916c	0.069c
1910.....	5,150,217	111,815,677	2.006c	2.115c	Loss 0.109c
1911.....	4,882,417	112,704,849	3.043c	2.105c	Loss 0.062c
1912.....	5,109,178	116,942,210	2.036c	1.986c	0.050c
1913.....	5,405,363	132,042,777	1.990c	1.974c	0.016c

Percentage of Increase, 1913, as Compared With 1908.

Passengers.....	20.17
Passenger One Mile.....	34.17
Passenger Revenues.....	33.00
Passenger Expenses.....	42.89

Years ended December 31st.

The increasing expense of transacting the passenger business is illustrated by this exhibit. It will be noticed that the ratio of expenses to revenues of the passenger business is considerably higher than that of the freight business, allowing but the small margin of 7.67% profit in the year 1908, when the best results were obtained, and in the cases of the years 1910 and 1911 the operating ratios exceeded 100%, the operations having resulted in a net loss.

While a comparison of the year 1913 with 1908 shows that the operating ratio of the passenger business did not increase at the same rate as that of the freight business, it should be borne in mind that the passenger ratio was so high in 1908 that such a condition could not result without the utter extinguishment of the profit from passenger business.

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PLAINTIFF'S EXHIBIT NO. 5.

(Filed Dec. 18, 1914.)

No. 153.

NORTHERN CENTRAL RAILWAY COMPANY,
BALTIMORE DIVISION.

	<i>Passenger.</i>		<i>Ratio of Expenses to Revenues.</i>
	<i>Revenues.</i>	<i>Expenses. (Inc. Taxes.)</i>	<i>Passenger.</i>
1908.....	\$ 931,858	\$ 985,001	105.70
1909.....	1,012,340	1,045,904	103.32
1910.....	1,089,574	1,319,213	121.08
1911.....	1,096,251	1,363,141	124.35
1912.....	1,160,382	1,244,285	107.18
1913.....	1,245,595	1,387,306	100.62

		<i>Average Per Passenger Per Mile.</i>		
		<i>Revenue.</i>	<i>Expenses.</i>	<i>Net.</i>
1908.....	2,472,305	47,324.853	1,909	2,081
1909.....	2,761,452	52,252.907	1,937	2,002
1910.....	3,029,429	55,928.785	1,948	2,358
1911.....	2,750,430	55,145.749	1,988	2,472
1912.....	2,948,435	58,068.442	1,979	2,121
1913.....	3,112,789	66,063.752	1,916	2,100

*Percentage of
Increase, 1913,
as Compared
with 1908.*

Passengers.....	25.91
Passenger One Mile.....	39.60
Passenger Revenues.....	35.81
Passenger Expenses.....	40.84

Years ended December 31st.

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PLAINTIFF'S EXHIBIT NO. 6.

(Filed Dec. 18, 1914.)

No. 154.

NORTHERN CENTRAL RAILWAY COMPANY.
TRAIN EARNINGS BY RUNS OF TRAINS.
JANUARY TO OCTOBER, 1914.

Distance.	Between.	Trips.	Other Than Commutation.			Commutation.			Total.			Train Miles.	Average Revenue Per Train Mile.
			Passenger.	%	Revenue.	Passenger.	%	Revenue.	Passenger.	%	Revenue.		
84.3	Balto. (Calvert Sta.), Harrisburg.....	3,181	515,864	74.7	\$182,374.67	90.1	174,775	25.3	\$20,142.73	9.9	690,639	\$202,517.42	268,158 0.76
83.3	Balto. (Union Sta.), Harrisburg.....	4,067	485,603	97.0	632,745.32	99.7	11,991	2.4	2,106.11	0.3	407,594	634,851.43	388,761 1.63
28.8	Balto. (Calvert Sta.), Parkton.....	3,161	191,580	63.7	36,106.24	73.2	109,300	36.3	13,219.99	26.8	300,880	46,326.23	91,037 0.54
15.6	Balto. (Calvert Sta.), Green Spring Jet.....	3,717	98,327	73.4	15,133.52	78.9	35,639	26.6	4,058.73	21.1	133,906	19,192.25	57,985 0.33
14.9	Balto. (Calvert Sta.), Cockeysville.....	2,794	115,012	66.1	16,787.59	73.1	59,002	33.9	6,160.22	26.9	174,014	22,956.81	41,631 0.55
8.5	Hollins. Green Spring Jet.....	1,044	27,759	80.2	2,404.73	88.7	6,863	19.8	305.70	11.3	34,622	2,710.43	8,874 0.31

Average Passenger Revenue per passenger train mile.....108.3 cents.
Average Passenger Expenses per passenger train mile.....107.4 cents.

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PLAINTIFF'S EXHIBIT NO. 7.
 (Filed Dec. 18, 1914.)
 No. 155.

CLASSES OF PASSENGER TRAVEL.
 NORTHERN CENTRAL RAILWAY COMPANY.

1913

	<i>Passenger Mileage.</i>	<i>Percent.</i>
First Class.....	87,475,025	66.25
Immigrant.....	475,027	0.36
Commutation.....	11,214,569	8.49
Mileage.....	32,878,156	24.90
	<hr/>	<hr/>
	132,042,777	100.00

ANALYSIS OF PASSENGER TRAFFIC BY CLASSES.
 NORTHERN CENTRAL RAILWAY COMPANY.

Showing amount of revenue contributed by each class of travel and the percentage it bears to the total revenue;

The percentage of passengers in each class to total number of passengers and passenger mileage;

Also average haul and average rate per passenger in each class.

YEAR 1913.

<i>Class of Transportation</i>	<i>Percent of Revenue.</i>	<i>Amount of Revenue.</i>	<i>Percent of Total Number of Passengers.</i>	<i>Percent of Passengers One Mile.</i>	<i>Average Rate Per Mile (Cents.)</i>	<i>Average Haul Per Passenger (Miles.)</i>
First Class. . .	46.06	\$1,201,747.76	34.16	38.53	2.36	27.6
Excursion . . .	20.48	534,244.30	20.67	23.17	1.75	27.4
Commutation . . .	4.34	113,080.20	25.18	8.50	1.01	8.2
Mileage. . . .	24.94	650,558.62	15.22	24.90	1.98	40.0
Special. . . .	1.60	43,955.53	0.78	1.82	1.83	57.1
Second Class. . .	0.22	5,782.82	0.07	0.23	1.91	76.8
Immigrant. . . .	0.36	9,419.00	0.13	0.36	1.98	65.1
Clerical. . . .	0.55	14,442.72	0.48	0.88	1.24	44.9
Employee. . . .	0.15	3,907.37	0.27	0.31	0.97	28.2
Strip. . . .	1.21	31,667.74	3.04	1.30	1.85	10.4
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
Totals. . . .	100.00	\$2,008,896.75	100.00	100.00	1.98	24.4

It will be observed that the commutation passengers were 25.18% of the total passengers, 8.50% of the miles traveled and but 4.34% of the revenue. The earnings from commutation passengers per mile were the smallest of any class of travel excepting employees.

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PLAINTIFF'S EXHIBIT NO. 9
(Filed Dec. 18, 1914.)
No. 157.
PASSENGER FARES BETWEEN BALTIMORE (CALVERT STATION) AND SUBURBAN STATIONS.
BALTIMORE DIVISION—WOODBERRY TO FREELAND, INCLUSIVE.

	<i>One-Way.</i>	<i>Ltd. Even.</i>	<i>10-Trip 1 Year.</i>	<i>10-Trip 3 Mo.</i>	<i>60-Trip Monthly.</i>		<i>48-Trip Monthly School.</i>		<i>180-Trip Quarterly.</i>		<i>100-Trip Annual.</i>	<i>50-Trip Annual.</i>
	<i>No Change.</i>	<i>Discont'd.</i>	<i>Discont'd.</i>	<i>New.</i>	<i>Old.</i>	<i>New.</i>	<i>Old.</i>	<i>New.</i>	<i>Old.</i>	<i>Discont'd</i>	<i>Firm, or Firm. Discont'd.</i>	
Woodberry.	3.3	\$.09	\$.15	\$1.00	\$.81	\$ 3.75	\$ 4.00	\$ 2.88	\$ 3.10	\$10.15	\$12.00	\$ 7.00
Melvale.	4.3	.11	.18	**1.00	.99	4.05	4.30	3.11	3.30	10.95	12.90	8.10
Cyburn.	5.3	.14	.22	21.00	1.26	4.35	4.00	3.34	3.56	11.75	13.80	8.70
Mt. Washington.	6.0	.15	.24	1.08	1.35	4.50	4.75	3.45	3.65	12.15	14.25	9.00
Bare Hills.	6.6	.17	.27	1.19	1.53	4.65	4.90	3.57	3.80	12.55	14.70	9.30
Hollins.	7.1	.18	.29	1.26	1.62	4.80	5.05	3.68	3.90	12.95	15.15	9.60
Sorrento.	7.9	.20	.32	1.40	1.80	5.35	5.91	4.15	4.75	13.75	16.05	10.20
Rockland.	9.2	.23	.37	1.62	2.07	5.40	5.65	4.14	4.35	14.60	16.95	10.80
Brooklandville.	10.1	.26	.41	1.80	2.34	5.70	5.95	4.37	4.60	15.40	17.85	11.40
Rogers.	11.3	.29	.46	2.03	2.61	6.00	6.25	4.60	4.80	16.20	18.75	12.00
Lystra.	11.9	.30	.48	2.12	2.70	6.30	6.55	4.83	5.05	17.00	19.65	12.60
Stevenson.	12.7	.32	.51	2.23	2.88	6.45	6.70	4.95	5.15	17.40	20.10	12.90
Eccleston.	13.4	.34	.54	2.43	3.06	6.75	7.00	5.18	5.40	18.25	21.00	13.50
Chattahoochee.	14.3	.36	.58	2.57	3.24	7.05	7.30	5.41	5.60	19.05	21.90	14.10
Garrison Forest.	14.9	.38	.60	2.70	3.42	7.20	7.45	5.52	5.75	19.45	22.35	14.40
Turnpike.	15.2	.38	.61	2.70	3.42	7.20	7.45	5.52	5.75	19.45	22.35	14.40
Green Spring June.	15.6	.39	.63	2.79	3.51	7.35	7.60	5.64	5.85	19.85	22.80	14.70
Brightside.	7.4	.19	.30	1.35	1.71	4.95	5.20	3.80	4.00	12.35	15.60	9.00
Lake.	7.8	.20	.32	1.40	1.80	5.10	5.35	3.91	4.15	13.75	16.05	10.20
Ruxton.	8.4	.21	.34	1.53	1.89	5.25	5.50	4.03	4.25	14.15	16.50	10.50
Riderwood.	9.2	.23	.37	1.62	2.07	5.40	5.65	4.14	4.35	14.60	16.95	10.80
Lutherville.	10.5	.27	.42	1.89	2.43	5.85	6.10	4.49	4.70	15.80	18.30	11.70
Timonium.	11.7	.30	.47	2.07	2.70	6.15	6.40	4.72	4.95	16.60	19.20	12.30
Padonia.	12.9	.33	.52	2.32	2.97	6.60	6.85	5.06	5.30	17.80	20.55	13.20
Texas.	13.5	.34	.54	2.43	3.06	6.75	7.00	5.18	5.40	18.25	21.00	13.50
Cockeysville.	14.9	.38	.60	2.70	3.42	7.20	7.45	5.52	5.75	19.45	22.35	14.40
Ashland.	15.8	.40	.64	2.84	3.00	7.35	7.60	5.64	5.85	19.85	22.80	14.70
Phoenix.	17.8	.45	.72	3.20	4.05	7.95	8.20	6.10	6.30	21.45	24.00	15.90
Sparks.	19.6	.49	.79	3.51	4.41	8.55	8.80	6.56	6.75	23.10	26.40	17.10
Glencoe.	20.5	.52	.82	3.69	4.68	8.85	9.10	6.79	7.00	23.90	27.30	17.70
Corbett.	22.3	.56	.90	4.00	5.04	9.30	9.55	7.13	7.35	25.10	28.65	18.00
Monkton.	23.0	.58	.92	4.11	5.22	9.60	9.85	7.36	7.60	25.90	29.55	19.20
Blue Mount.	25.0	.63	1.00	4.50	5.67	10.20	10.45	7.82	8.05	27.55	31.35	20.40
White Hall.	26.5	.67	1.06	4.77	6.03	10.65	10.90	8.17	8.40	28.75	32.70	21.30
Graystone.	27.2	.68	1.09	4.91	6.12	10.80	11.05	8.28	8.50	29.15	33.15	21.60
Parkton.	28.8	.72	1.16	5.18	6.48	11.25	11.50	8.03	8.85	30.40	34.50	22.50
Walker.	30.1	.76	1.21	5.40	6.84	11.70	11.95	8.97	9.20	31.60	35.85	23.40
Bentley.	31.5	.79	1.26	5.67	7.11	12.15	12.40	9.32	9.55	32.80	37.20	24.30
Freeland.	34.3	.88	1.38	6.17	7.74	13.05	13.30	10.01	10.20	35.25	39.90	26.10

* 14 in strip; ** 12 in strip; † 11 in strip.

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PLAINTIFF'S EXHIBIT NO. 10.
(Filed Dec. 18, 1914.)
No. 158.

BALTIMORE DIVISION LOCAL PASSENGER TRAIN SERVICE BETWEEN BALTIMORE AND PARKTON BY TRAINS

Train Number.	From.	To.	Length of Run in Miles.	Average Number Cars per Train.	Pasger. Car Mileage Per Train.	Wages of Engine Crew Per Train.	Wages of Train Crew Per Train.	Engine Expenses. Per Train.	Pasenger Car Charges Per Train.	Total Cost Per Train.	Average Cost Per Mile Run.	Service Performed By.
204	Parkton.....	Balto., Calvert...	29	7	203	\$2.29	\$3.46	\$ 9.02	\$ 4.67	\$ 19.44	\$.670	
205	Balto., Calvert...	Parkton.....	29	7	203	2.29	3.45	9.02	4.67	19.43	.670	
Extra	Parkton.....	Balto., Union....	28	3	117	2.62	3.50	8.72	1.93	16.77	.599	
921	Balto., Calvert...	Parkton	29	3	87	2.71	3.62	9.02	2.00	17.35	.598	
211	Balto., Calvert...	Parkton.....	29	3	87	3.07	3.76	9.02	2.00	17.85	.616	
200	Parkton.....	Balto., Calvert...	29	3	87	3.08	3.77	9.02	2.00	17.87	.616	Crew No. 2. Weekdays Exc. Saturdays.
211	Balto., Calvert...	Parkton.....	29	3	87	3.49	4.32	9.02	4.67	22.78	.786	Crew No. 2. Saturdays.
204	Parkton.....	Balto., Calvert...	29	7	203	3.50	5.59	9.02				
211	Balto., Calvert...	Parkton.....	29	3	87	2.15	2.80	9.02	2.00	15.97	.551	
200	Parkton.....	Balto., Calvert...	29	3	87	2.15	2.81	9.02	2.00	15.98	.551	Crew No. 2. Sundays.
207	Balto., Calvert...	Parkton.....	29	3	87	3.15	3.24	9.02	2.00	17.41	.600	
210	Parkton.....	Balto., Calvert...	29	3	87	3.16	3.25	9.02	2.00	17.43	.601	Crew No. 3. Sundays.
201	Balto., Calvert...	Parkton.....	29	4	116	2.46	4.47	9.02	2.67	18.62	.642	
920	Parkton.....	Balto., Calvert...	29	4	116	2.45	3.19	9.02	2.67	17.33	.598	
203	Balto., Calvert...	Parkton.....	29	3	87	2.06	3.19	9.02	2.00	16.27	.561	
208	Parkton.....	Balto., Calvert...	29	3	87	2.06	2.67	9.02	2.00	15.75	.543	
201	Balto., Calvert...	Parkton.....	29	4	116	2.24	4.11	9.02	2.67	18.04	.622	
206	Parkton.....	Balto., Calvert...	29	4	116	2.24	4.11	9.02	2.67	18.04	.622	Crew No. 8. Weekdays Exc. Saturdays.
201	Balto., Calvert...	Parkton.....	29	4	116	2.24	4.11	9.02	2.67	18.04	.622	
206	Parkton.....	Balto., Calvert...	29	4	116	2.24	4.11	9.02	2.67	18.04	.622	Crew No. 8. Saturdays.
203	Balto., Calvert...	Parkton.....	29	3	87	2.42	3.19	9.02	2.00	16.63	.573	
922	Parkton.....	Balto., Calvert...	29	4	116	2.42	3.19	9.02	2.67	17.30	.597	
207	Balto., Calvert...	Parkton.....	29	3	87	2.46	2.63	9.02	2.00	16.11	.556	
210	Parkton.....	Balto., Calvert...	29	3	87	2.47	2.63	9.02	2.00	16.12	.556	Crew No. 9. Weekdays.

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PLAINTIFF'S EXHIBIT NO. 10—Concluded

TOTAL MILEAGE, COSTS, ETC., OF ABOVE SERVICE FOR PERIOD OF ONE WEEK AND AVERAGES PER TRAIN.

Train Number.	From.	To.	No. of Days.	Train Mileage.	Number of Cars.	Passenger Car Mileage.	Wages of Engine Crew.	Wages of Train Crew.	Engine Expenses.	Passenger Car Charges.	Total Costs.	Service Performed By.
204	Parkton.....	Balto., Calvert...	6	174	42	1218	\$13.74	\$ 20.76	\$ 54.12	\$ 28.02	\$ 116.64	
205	Balto., Calvert...	Parkton.....	6	174	42	1218	13.74	20.70	54.12	28.02	116.58	
Extra	Parkton.....	Balto., Union....	1	28	3	117	2.62	3.50	8.72	1.93	16.77	
921	Balto., Calvert...	Parkton.....	1	29	3	87	2.71	3.62	9.02	2.00	17.35	
211	Balto., Calvert...	Parkton.....	5	145	15	435	15.35	18.80	45.10	10.00	89.25	
200	Parkton.....	Balto., Calvert...	5	145	15	435	15.40	18.85	45.10	10.00	89.35	
211	Balto., Calvert...	Parkton.....	1	29	3	87	3.49	4.22	9.02	2.00	18.83	
204	Parkton.....	Balto., Calvert...	1	29	7	203	3.50	5.59	9.02	4.67	22.78	
211	Balto., Calvert...	Parkton.....	1	29	3	87	2.15	2.80	9.02	2.00	15.97	
200	Parkton.....	Balto., Calvert...	1	29	3	87	2.15	2.81	9.02	2.00	15.98	
207	Balto., Calvert...	Parkton.....	1	29	3	87	3.15	3.24	9.02	2.00	17.41	
210	Parkton.....	Balto., Calvert...	1	29	3	87	3.16	3.25	9.02	2.00	17.43	
201	Balto., Calvert...	Parkton.....	1	29	4	116	2.46	4.47	9.02	2.67	18.62	
920	Parkton.....	Balto., Calvert...	1	29	4	116	2.45	3.19	9.02	2.67	17.33	
203	Balto., Calvert...	Parkton.....	6	174	18	522	12.36	19.14	34.12	12.00	97.62	
208	Parkton.....	Balto., Calvert...	6	174	18	522	12.36	16.02	34.12	12.00	94.50	
201	Balto., Calvert...	Parkton.....	5	145	20	580	11.20	20.55	45.10	13.35	90.20	
206	Parkton.....	Balto., Calvert...	5	145	20	580	11.20	20.55	45.10	13.35	90.20	
201	Balto., Calvert...	Parkton.....	1	29	4	116	2.24	4.11	9.02	2.67	18.04	
206	Parkton.....	Balto., Calvert...	1	29	4	116	2.24	4.11	9.02	2.67	18.04	
203	Balto., Calvert...	Parkton.....	1	29	3	87	2.42	3.19	9.02	2.00	16.63	
922	Parkton.....	Balto., Calvert...	1	29	4	116	2.42	3.19	9.02	2.67	17.30	
207	Balto., Calvert...	Parkton.....	6	174	18	522	14.76	15.78	54.12	12.00	96.66	
210	Parkton.....	Balto., Calvert...	6	174	18	522	14.82	15.78	54.12	12.00	96.72	
Totals.....			70	2029	277	8063	\$172.00	\$238.32	\$631.10	\$184.09	\$1226.20	
Average, per train.....				29	4	115	2.46	3.40	9.02	2.64	17.52	
Average, per train mile.....							.085	.117	.311	.091	.604	

Filed January 9th 1915.

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253 *Opinion of the Court of Appeals of Maryland.*

Court of Appeals of Maryland, January Term, 1915.

THE PENNSYLVANIA RAILROAD COMPANY, Lessee of the Northern
Central Railway Company,
vs.
ALBERT G. TOWERS et al., Constituting the Public Service Com-
mission, Maryland.

Judge STOCKBRIDGE delivered the opinion of the Court:

The Pennsylvania Railroad Company as Lessee, operates as a part of its system, the line known as the Northern Central Railway. The Baltimore division of this extends from Baltimore to Harrisburg, Pennsylvania, lying thus in two states. Through traffic over this is accordingly interstate traffic. In addition to this through business, there is also local business, which between Baltimore and Parkton is wholly in the State of Maryland, and this business being intrastate is subject to State control, in so far as it is subject to any control at all in the interest of the public. For some time passed there has been a demand on the part of the railroads of this country for an increase of their revenues, on the ground that as the result of a number of contributing causes they were either making no net revenue at all or at best one inadequate to meet the requirements for the upkeep of their road bed and rolling stock, or extensions rendered desirable by the increase of population or development of new localities, and also yield any adequate return on the capital employed in the enterprise. Among the causes contributing to this condition were the hostile legislation in many States, placing new and additional burdens on such companies, the great increase in wages paid to employees, and enhanced cost of requisite supplies of all kinds.

As a means to in part overcome the unfavorable condition, there has been throughout the eastern States at least, 254 an increase in the rates for passenger transportation. Such travel may be roughly divided into four general classes, though this will not include all varieties of the passenger transportation, each one of which has its own distinctive characteristics, which clearly differentiate it from the others. These classes are single rate fares, mileage rates, commutation rates and party rates. It is with the third of these, commutation rates, that this case has to deal.

For a number of years there had been in force on The Northern Central Railway commutation rates from Baltimore to points on the line of the railway as far as Parkton. On November 25th, 1914, the Railway Company filed with the Public Service Commission of this State a proposed tariff of new passenger rates for such commutation service involving an entire revision and increase of the rates over those theretofore charged for such service. This was followed by a "petition and complaint" by a number of those to be affected by the changes, and the question thus came before the

Public Service Commission, which heard testimony on behalf both of the Petitioners and the Railroad, and by its order of December 21st, 1914, granted certain increases, though in no instance to the full extent asked by the Railroad Company. Then the Bill in this case was filed to enjoin the commission from enforcing or attempting to enforce the order of December 21st. It is from the decree dismissing the Bill of the Railroad Company that this appeal is taken.

The question is not now presented whether it is within the power of the Public Service Commission to require the establishment of a schedule of commutation rates by a railway company in a case where no such rates had theretofore existed. Upon that no opinion is now expressed. What the Court is now called to pass upon is the reasonableness of commutation rates, where such a system of rates had long been in operation by the action of the 255 Company, and where a modification of those rates was proposed by the railway company and by it submitted to the Commission. Whether commutation rates shall be established at all is a question of policy upon the part of the Company, but if such a policy is adopted there will still remain the reasonableness of the manner in which that policy is carried out.

What was endeavored to be done by the Railroad with regard to rates, and how far the same was gratified by the order of the Commission will be best understood from the following table:

Rates prior to Nov. 25, 1914.	Rates as per schedule f'd Nov. 25, 1914.	Rates under order P. S. Com., Dec. 23/14.
1. Round trip, 10 day, $2\frac{1}{4}\text{¢}$ per M.	Round trip, no limit, $2\frac{1}{2}\text{¢}$ per M.	Round trip, $2\frac{1}{4}\text{¢}$ per M.
2. Exc. 2-10 days, $2\frac{1}{4}\text{¢}$ per M.	Discontinued.	No ruling made.
3. 10 strip ticket, 1 yr., $18/10\text{¢}$ per M.	10 trip, 3 mos., $2\frac{1}{4}\text{¢}$ per mo.	10 strip, 3 mos., 2¢ per M.
4. 60 trip, 1 mo., 2¢ for first 3 M.; $\frac{1}{4}\text{¢}$ for ea. add'l $\frac{1}{2}$ M.	60 trip, 1 mo. Former rate plus 25¢ flat.	60 trip, 1 mo. Former rate plus 25¢.
5. 100 trip, 1 yr., @ double 60 trip.	Discontinued.	100 trip, 4 mos. Former rates plus \$1.
6. 180 trip, 3 mos.; same as 4, less 10%.	180 trip, 3 mos., @ 3 times 60 trip.	180 trip, 3 mos. Former rate plus 75¢.
7. 46 trip, School; 1 mo., $46/60$ of 60 trip.	40 trip, School, 1 mo., $46/60$ of 60 trip.	46 trip, School, 1 mo., $46/60$ of 60 trip.

At or about the same time the Railroad Company made increases in the single rate fares, and also in the mileage ticket, but as both of these forms of transportation involved under the circumstances of this case, interstate rather than intrastate carriage, the jurisdiction over them belonging to a different tribunal, and properly did not and cannot enter into the consideration of this case at all.

The first prayer of the Bill is that the action of the Public Service Commission may be declared void and set aside. When couched in so general terms the ground for such a prayer is not clearly evident. A body like the Public Service Commission has of course

256 no power or authority to make any order, except in so far as the authority is distinctly conferred upon it by the legislature. But the Act creating the Public Service Commission, now codified as See. 435 of Art. 23, when taken in connection with the amendatory Act. Ch. 162 of the Acts of 1912, clearly confers upon the Commission full power, so far as it was within the province of the Legislature to grant it, to supervise and regulate all tariffs and transportation charges within the State, including by its very terms, commutation rates. Or the contention of the Plaintiff may have been in this regard upon a somewhat different theory, namely, that while it might be within the power of the Legislature and therefore, by delegation within the power of the Public Service Commission, to regulate and establish the single rate fare, yet when it had done so, it had exhausted its power and could not thereafter make any regulation whatever to affect either mileage or commutation rates, and for this claim there is warrant to be found in the language used in the decision of the Lake Shore & Mich. So. Ry. v. Smith, 173 U. S. 684, in which Mr. Justice Peckham, elaborately discusses the question of the validity of an Act of the Michigan Legislature, which was intended to regulate the price of 1000 mile tickets, and holds that in attempting so to do the Michigan Legislature had exceeded its powers. Without citing his argument in full, the following language to be found in the opinion, will indicate its trend. "If unhampered by contract, there is no doubt of the power of the State to provide by legislation for maximum rates of charges for railroad companies, subject to the condition that they must be such as will admit of the carrier earning a compensation that under all the circumstances shall be just to it and to the public, and whether they are or not is a judicial question. If the rates are fixed at an insufficient amount within the meaning of that term as given by the Courts, the law would be invalid, as amounting to the taking of the property of the company

257 without due process of law. * * * The question is presented in this case whether the Legislature of a State has also the right after having fixed a maximum rate for the transportation of passengers to still further regulate their affairs and to discriminate and make an exception in favor of certain persons and give them a right of transportation for a less sum than the general rate provided by law. * * * The Act is not a general law upon the subject of rates establishing maximum rates which the Company can in no case violate. The legislature having established such maximum as a general law, now assumes to interfere with the management of the Company while conducting its affairs pursuant to and obeying the statute regulating rates and charges, and notwithstanding such rate it assumes to provide for a discrimination, an exception in favor of those who may desire and are able to purchase tickets at what might be called wholesale rates—discrimination which operates in favor of the wholesale buyer leaving the others subject to the general rule. It thus invades the general right of a company to conduct and manage its own affairs, and compels it to give the use of its property for less than the general

rate to those who come within the provisions of the statute, and to that extent it would seem that the statute takes the property of the Company without due process of law. We speak of the general right of the Company to conduct and manage its own affairs, but at the same time it is to be understood that the Company is subject to the unquestioned jurisdiction of the Legislature in the exercise of its power to provide for the safety, the health and the convenience of the public, and to prevent improper exactions or extortionate charges from being made by the Company. * * *

The power of the Legislature to enact general laws regarding a Company and its affairs does not include the power to compel 258 it to make an exception in favor of some particular class in the community and to carry the members of that class at a less sum than it has the right to charge for those who are not fortunate enough to be members thereof. This is not reasonable regulation."

The Act was further criticized for the reason that it compelled the Company to carry not only those who might purchase the mileage tickets, but also the length of time during which the Company should be obliged to honor them, the forfeiture of the ticket under certain conditions and the redemption of any unused portion of it at the expiration of two years. This Act applied in a case with regard to a mileage ticket, and in regard to the same class of ticket, the decision above quoted was followed and adopted in *Beardsley v. N. Y. L. E. & W. R. R.* 162 N. Y. 230; *North Dakota v. The Great Northern Ry.*, 17 No. Da. 370; *State v. Bonneval*, 128 La. 902; *Virginia v. Atl. Coast Line*, 106 Va. 61; *Chi. R. I. & P. v. Ketchum*, 121 Fed. 986.

It was contended in argument on behalf of the Public Service Commission, that while not in terms overruled, the effect of the decision in the Lake Shore case, *supra*, had been very much weakened, if not entirely done away with, by other and later decisions. Since the argument of this case, however, the Supreme Court of the United States has rendered opinions in three cases, which clearly show that in the view of that Court the decision in the Lake Shore case is still in full force. The first two of the cases referred to are the *Northern Pac. Ry. Co. v. No. Dakota*; and the *Minneapolis S. P. & S. S. Ry. Co. v. No. Dakota*, the proceedings in each of these cases were instituted by the Attorney General of the State, for a mandatory injunction against the railroads to require them to put into effect an Act of the Legislature of North Dakota, establishing a maximum coal rate in that State. In the case of the *Northern Pac.*

Ry. Co. it was shown that out of a total revenue derived from 259 the carriage of coal of \$58,953.07, there was a surplus income over and above expenses, of \$827.61, and that in the case of the other road the carriage was conducted at an actual loss. In the course of that opinion Mr. Justice Hughes uses the following language:

"The general principles to be applied are not open to controversy. The railroad property is private property devoted to a public use. As a corporation, the owner is subject to the obligations of its charter. As the holder of special franchises, it is subject to the condi-

tions upon which they were granted. Aside from specific requirements of this sort, the common carrier must discharge the obligations which inhere in the nature of its business. It must supply facilities that are reasonably adequate; it must carry upon reasonable terms; and it must serve without unjust discrimination. These duties are properly called public duties, and the State within the limits of its jurisdiction may enforce them. The State may prescribe rules to insure fair remuneration and to prevent extortion, to secure substantial equality of treatment in like cases, and to promote safety, good order and convenience. * * *

But, broad as is the power of regulation, the State does not enjoy the freedom of an owner. The fact that the property is devoted to a public use on certain terms does not justify the requirement that it shall be devoted to other public purposes, or to the same use on other terms, or the imposition of restrictions that are not reasonably concerned with the proper conduct of the business according to the undertaking which the carrier has expressly or impliedly assumed. If it has held itself out as a carrier of passengers only, it cannot be compelled to carry freight. As a carrier for hire, it cannot be required to carry persons or goods gratuitously. The case would not be altered by the assertion that the public interest demanded such

carriage. The public interest cannot be invoked as a justification for demands which pass the limits of reasonable protection and seek to impose upon the carrier and its property burdens that are not incident to its engagement. In such a case, it would be no answer to say that the carrier obtains from its entire intrastate business a return as to the sufficiency of which in the aggregate it is not entitled to complain. * * *

We have, then, to apply these familiar principles to a case where the State has attempted to fix a rate for the transportation of a commodity under which, taking the results of the business to which the rate is applied, the carrier is compelled to transport the commodity for less than cost or without substantial compensation in addition to cost. We say this, for we entertain no doubt, that in determining the cost of the transportation of a particular commodity, all the outlays which pertain to it must be considered. We find no basis for distinguishing in this respect between so-called 'out-of-pocket costs,' or 'actual' expenses, and other outlays which are none the less actually made because they are applicable to all traffic, instead of being exclusively incurred in the traffic in question. Illustrations are found in outlays for maintenance of way and structures, general expenses and taxes. It is not a sufficient reason for excluding such, or other, expenses to say that they would still have been incurred had the particular commodity not been transported. That commodity has been transported; the common carrier is under a duty to carry, and the expenses of its business at a particular time are attributable to what it does carry. The State cannot estimate the cost of carrying coal by throwing the expense incident to the maintenance of the roadbed, and the general expenses, upon the carriage of wheat; or the cost of carrying wheat by throwing the burden of the upkeep of the property upon coal and other com-

modities. This, of course, does not mean that all commodities are to be treated as carried at the same rate of expense. The 261 outlays that exclusively pertain to a given class of traffic must be assigned to that class, and the other expenses must be fairly apportioned. It may be difficult to make such an apportionment, but when conclusions are based on cost the entire cost must be taken into account. * * * But, while local interests serve as a motive for enforcing reasonable rates, it would be a very different matter to say that the State may compel the carrier to maintain a rate upon a particular commodity that is less than reasonable, or—as might equally well be asserted—to carry gratuitously, in order to build up a local enterprise. That would be to go outside the carrier's undertaking, and outside the field of reasonable supervision of the conduct of its business, and would be equivalent to an appropriation of the property to public uses upon terms to which the carrier had in no way agreed. It does not aid the argument to urge that the State may permit the carrier to make good its loss by charges for other transportation. If other rates are exorbitant, they may be reduced. Certainly, it could not be said that the carrier may be required to charge excessive rates to some in order that others might be served at a rate unreasonably low. * * *

But a different question arises when the State has segregated a commodity, or a class of traffic, and has attempted to compel the carrier to transport it at a loss or without substantial compensation even though the entire traffic to which the rate is applied is taken into account. On that fact being satisfactorily established, the presumption of reasonableness is rebutted. * * *

In *Interstate Commerce Commission v. Union Pacific R. R. Co.*, 222, U. S. 541, 549, in speaking of the carriers' concession that they were unable to determine the cost of the particular traffic in question and that a former rate had not been 'less than cost,' the Court

262 said:—"Whether the carrier earned dividends or not sheds little light on the question as to whether the rate on a particular article is reasonable. For, if the carrier's total income enables it to declare a dividend, that would not justify an order requiring it to haul one class of goods for nothing, or for less than a reasonable rate. On the other hand, if the carrier earned no dividend, it would not have warranted an order fixing an unreasonably high rate on such articles." * * *

To repeat and conclude: It is presumed,—but the presumption is a rebuttable one—that the rates which the State fixes for intra-state traffic are reasonable and just. When the question is as to the profitability of the intrastate business as a whole under a general scheme of rates, the carrier must satisfactorily prove the fair value of the property employed in its intrastate business and show that it has been denied a fair return upon that value. With respect to particular rates, it is recognized that there is a wide field of legislative discretion, permitting variety and classification, and hence the mere details of what appears to be a reasonable scheme of rates, or a tariff or schedule affording substantial compensation, are not subject to judicial review. But this legislative power cannot be regarded as

being without limit. The constitutional guaranty protects the carrier from arbitrary action and from the appropriation of its property to public purposes, outside the undertaking assumed; and where it is established that a commodity, or a class of traffic, has been segregated and a rate imposed which would compel the carrier to transport it for less than the proper cost of transportation, or virtually at cost, and thus the carrier would be denied a reasonable reward for its service after taking into account the entire traffic, to which the rate applies, it must be concluded that the State has exceeded its authority."

263 The third case of those recently decided by the Supreme Court was the case of the Norfolk & West. Ry. Co. v. Conley; in which the Court had under consideration an Act of the Legislature of West Virginia establishing a maximum rate for passengers on railroads at two cents a mile and in that case after reference to the two cases last cited, the Court says:

"The fundamental question presented is, whether the validity of the passenger rate can be determined by its effect upon the passenger business of the Company separately considered. It is not necessary that there should be uniform rates or the same percentage of profits on every sort of business; and that there is abundant room for reasonable classification and the adaptation of rates to various groups of services. It was further held that despite this range of permissible action, the State has no arbitrary power over rates; that the devotion of the property of the carrier to public use is qualified by the condition of the carrier's undertaking that its services are to be performed for reasonable reward; and that the State may not select a commodity, or class of traffic, and instead of fixing what may be deemed to be reasonable compensation for its carriage, compel the carrier to transport it either at less than cost or for a compensation that is merely nominal.

These considerations are controlling here. The passenger traffic is one of the main departments of the company's business; it has its separate equipment, its separate organization and management, and of necessity its own rates. In making a reasonable adjustment of the carrier's charges, the State is under no obligation to secure the same rate of return from each of the two principal departments of business, passenger and freight; but the State may not select either of these departments for arbitrary control. Thus, it

264 would not be contended that the State might require passengers to be carried for nothing, or that it could justify such action by placing upon the shippers of goods the burden of excessive charges in order to supply an adequate return for the carrier's entire service. And, on the same principle, it would also appear to be outside the field of reasonable adjustment that the State should demand the carriage of passengers at a rate so low that it would not defray the cost of their transportation, when the entire traffic under the date was considered, or would provide only a nominal reward in addition to cost."

From these citations it will be apparent that the limitations placed upon legislative action do not go to the extent of saying that the

establishment by State authority of a maximum single rate exhausts the power of State regulation, or that there may not be different rates for different characters of service. In the interest of the public there subsists and must subsist in the State the power to control and prevent exorbitant or extortionate charges for services performed. While at the same time that regulation must be reasonable in its character and so framed as under ordinary or normal conditions to bring about a proper return to the railroad for the service performed independent of the return to the railroad from other and a different character of service.

The contention was made upon the part of the Public Service Commission that in determining the reasonableness of the charge the entire net revenue of a railroad must be looked to, from whatever source derived, whether passenger, freight, express or investments held by the company, and there are undoubtedly cases which tend to support that view, among which may be named Ry. Co. vs. Smith, 60 Ark., 221; P. & A. R. R. v. Fla., 25 Fla., 310; The

People v. St. L. T. & H. R. R., 176 Ill., 512. These cases, 265 however, are not in accord with the general trend of decision.

In L. & N. R. R. v. R. R. Comms., 208, Fed., 35, certain passenger rates were complained of, and the evidence tended to show that the operation of the road as a whole was unprofitable, mainly because it was transporting iron and coal at or below cost and it was there held, that the intrastate passenger rate could not be attacked because the entire business of the road did not yield a fair return. In the Railroad Comms. v. The Ill. Cent. R. R., 20 I. C. C., 181, the question arose with regard to certain tolls of the Dunleith & Dubusque Bridge Company, of twenty-five cents per passenger, for local traffic, when the same charge was not made on through tickets, and it was there said that the fact that the net earnings of the carrier may be large does not of itself justify us in fixing a rate at less than is reasonable for the service, all other things being considered. In the commutation rate cases; 21 I. C. C., 428, the Interstate Com. Com. had under consideration the commutation rates of eight railroad companies, running into New York, most of them from points in New Jersey. In the opinion which was filed, Commissioner Harlan said:

"In our judgment the carriage of a commuter differs in many respects from other passenger traffic and is an independent, special service."

He reviews at length the history of commutation transportation, and shows wherein it differs from transportation by mileage tickets or other forms of carriage and there holds that for commutation service the carrier is entitled to receive a reasonable compensation, and no more. In that case he found that the commutation rates charged by the New Jersey Central were fair and reasonable, while those charged by the Pennsylvania were not, and accordingly required a reduction in the commutation rates of the latter 266 road; but in so doing no account was taken of the passenger returns from the entire Pennsylvania system, nor of the net revenue derived from the combined receipts of freight, passenger-

ger and express business. So in the Minnesota rate cases, 230 U. S., 352, it was held that where a carrier does both interstate and intrastate business, in order to determine whether a scheme of maximum intrastate rates afforded a fair return for the value of the property employed in intrastate business, the rates prescribed must be considered separately, and that the profits and losses on interstate business cannot be off-set. And the same principle underlay the decision in the Interstate Com. Comm. v. The N. P. Ry., 222 U. S., 541; and the Int. Com. Comm. v. L. & N. R. R., 227 U. S., 88. The same question was before this Court in the case of the Public Service Commission v. N. C. Ry. Co., 122 Md., 355; and on page 390, Judge Thomas, speaking for this Court, said: "We cannot adopt the view that common carriers may be required to perform services at rates less than the actual cost of such services, for that would amount to confiscation, and would ultimately defeat the very end they are designed to accomplish, namely, to subserve the public good and public convenience."

One of the grounds upon which the Court was asked to enjoin the enforcement of the order of the Public Service Commission was that it was discriminatory. But it is not all discriminations which are condemned by the law. As illustrating the distinction, it is sufficient to cite the case of Iowa v. O. & C. B. Ry. Co., 113 Iowa, 30, in which an ordinance of the City of Council Bluffs was held void for this reason, and the case of the Interstate Com. Comm. v. B. & O. R. R., 145 U. S., 263, commonly known as the party-rate case, in which a not dissimilar discrimination to that now presented was involved, and yet was held to be a valid act.

When we turn to the testimony offered before the Public Service Commission to determine the reasonableness or unreasonableness of the rates as fixed by the order of the Commission, we encounter serious difficulties. It is conceded that the increase in the straight fare ticket will produce an increase of revenue to the railway, but of what amount or how far it may operate to diminish the present passenger operating ratio, there is no means of determining. As the accounts of the railway company have been kept there has been an attempt to apportion the receipts and expenditures as between freight and passenger business, both over the entire Northern Central system, and also over the Baltimore division. But that is as far apparently as the effort at apportionment has gone. In this, 65% of the expenditures has been apparently readily apportioned as between the freight and passenger business, while the remaining 35% has been allocated arbitrarily. In this is included much in the way of expense which pertains to both of these classes of business, such as maintenance of way, bridges, and the like, but taking the apportionment as made to have been measurably fair, there is this further difficulty remaining. No attempt has been made to sub-divide the receipts upon the passenger business of the Baltimore division, as between the portion which lies within the State of Maryland, and the territory between Parkton and Harrisburg, still less to furnish anything like exact figures of the relative receipts and expenses arising from commutation busi-

ness. Numerous and elaborate tabulations were offered on behalf of the company tending to show that the passenger business of the Baltimore division had been operated at an actual loss for a number of years. Without going into these in detail the subjoined extract from plaintiff's exhibit No. 5 will show the claim of the Railway in this regard.

	Passenger		Ratio of expenses to revenues Passenger.
	Revenues.	Expenses. (inc. taxes).	
1908.....	\$931,858	\$985,001	105.76
1909.....	1,012,340	1,045,904	103.32
1910.....	1,089,574	1,319,213	121.08
1911.....	1,096,251	1,363,141	124.35
1912.....	1,160,982	1,244,285	107.18
1913.....	1,265,595	1,387,306	109.62

But in this connection it must be borne in mind that the figures in the expense column and in the column of ratio of expenses to revenue might be materially modified by a slightly different apportionment of the 35% which as already stated was necessarily arbitrarily allocated, and might be still further modified if we had absolute figures in regard to that portion of the passenger business of the Baltimore division conducted over the part of that division lying between Baltimore and Parkton.

From what has already been said the rates charged to the general public must be reasonable, not however, to the point of being confiscatory. But "the point of injustice is reached long before that of confiscation, and to make the word confiscatory really appropriate it must be read not in the sense of producing actual confiscation, but of having an inevitable tendency thereto." Pa. R. R. v. Phila. Co. 220 Pa. 100. "Public Service corporations are entitled to look to a rate of return, if their property will earn it, not less than the legal rate of interest, and a system of charges that yields no more income than is fairly requisite to maintain the plant, pay fixed charges and operating expenses, provide a suitable sinking fund for the payment of debts, and pay a fair profit to the owners of the property, can not be said to be unreasonable. * * * While the

public has certain rights which in case of conflict must pre-
269 vail, yet it must not be forgotten that even so-called public service corporations are private property, organized and conducted for private, corporate profits. And unless necessary for the fulfillment of their corporate duties they should not be required to do any part of their business in an unbusiness-like way with a resulting loss. If part is unprofitable, it is neither good business nor justice to make it more so because the loss can be off-set by profit on the rest." Ibid.

This plainly follows for the reason stated in B. & M. R. R. v. State 93 Atl. Rep. 306, 310; where it is said; "Although the plaintiffs are common carriers, engaged in a public service, they are entitled to compensation for the service performed. Authority for

requiring them to render service for less than fair compensation, if it exists, must be found in some preceding stipulation of the parties. It must be rested in contract, not upon the police power of the State."

Though less explicit, to the same effect will be found the decision in *St. L. & S. F. Ry. v. Gill*, 156 U. S. 649.

The general principles applicable to a case of this character have already been stated, and the conclusion to be drawn from the evidence as to what is and what is not proved with regard to the confiscatory effect of the tariffs as embodied in the order of the Public Service Commission. The next step is as to the force and effect which should be given to the findings of the Commission, as contained in the order of December 21st, 1914. Analogy is sought to be drawn from the provision in the Interstate Commerce Act which provides that the findings of that Commission are *prima facie* correct, and this has been recognized in a number of cases. *C. H. & D. Ry. v. Int. Com. Comm.* 206 U. S. 142; *Ill. Cen. Ry. Co. v. Int. Com. Comm.* 206 U. S. 441.

While this provision of the Interstate Commerce Act has no exact counterpart in the Public Service Commission Act of this 270 State, the function of the Courts, when called on to review an order of the Public Service Commission was clearly and aptly stated by Judge Thomas, in *Pub. Serv. Comm. v. N. C. Ry. Co.*, 122 Md. 388, where he said:

"Upon an application to the Court for an injunction restraining the execution of an order of the Commission, the Court has no authority to determine what would be a reasonable rate for the service required, or to establish rates, but its power is limited to the determination of the question whether the rates fixed by the Commission are unreasonable or unlawful, and until it is made to appear by clear and satisfactory evidence that the action of the Commission is unreasonable or unlawful, the Court is without power to impose any restrictions upon the execution of the Commission's order."

and the same view has been adopted in Wisconsin in *M. St. P. & S. S. — Ry. v. R. R. Com.*, 136 Wis. 146, and it is there stated that the function of the Court, "is not to determine whether a rate or service fixed by it is reasonable and just but to determine whether the order is unreasonable or unlawful. If the order be found by the Court to be such that reasonable men might well differ as to its correctness it can not be said to be unreasonable."

The whole duty, power and function of the Court in such cases was well summed up by Chief Justice White in *Ill. Cent. R. R. v. Int. Com. Comm.* 215 U. S. 470; when he said:

"Beyond controversy, in determining whether an order of the Comm. shall be suspended or set aside, we must consider (a) All relevant questions of constitutional power or right; (b) All pertinent questions as to whether the administrative order is within the scope of the delegated authority under which it purports to have been made, and (c) a proposition which we state independently

although in its essence it may be contained in the previous one, viz. whether although the order be in form within the delegated power, nevertheless it must be treated as not embraced therein, because the exertion of authority which is questioned has been manifested in such an unreasonable a manner as to cause it in truth to be within the elementary rule that the substance and not the shadow determines the validity of the exercise of the power. Plain as it is that the powers just stated are of the essence of judicial authority, and which, therefore, may not be curtailed and whose discharge may not be by us in a proper case avoided, it is equally plain that such peren-ial powers lend no support whatever to the proposition that we may, under the guise of exerting judicial power, usurp merely administrative functions by setting aside a lawful administrative order upon our conception as to whether the administrative power has been wisely exercised."

As already pointed out the increase in the passenger tariff, including straight fares and the return from commutation and mileage tickets is an uncertain quantity. It is perfectly evident that in the estimation of the railroad accounting officials an increase of revenue was expected to be derived under the tariff as proposed by them on November 25th, and if this estimate is correct, it necessarily follows that the revenue to be derived under the tariffs established by the order of the Public Service Commission of December 21st, must also bring an increase in revenue over that previously received. With the increase in straight fares the Public Service Commission has not attempted to deal, yet some portion of this when received, is properly to be apportioned to the receipts of the Baltimore division and the effect will necessarily be to produce an increase in revenue derived from passenger traffic beyond that received for the last five years, other conditions remaining normal. The same is true with regard to commutation rates. It may turn out as the result of the revision of these tariffs that there will be more monthly tickets sold and fewer of the one hundred trip tickets, but all of this is to a very considerable degree a matter of conjecture merely. The true test of the effect upon the revenue of the changes made must and can only be the test of time and practical experience. The bill in the present case was filed almost immediately upon the passage of the order by the Public Service Commission, and we are of opinion that before that order is disturbed by the Court it should

be given the test of a practical trial. The most that the 272 evidence gives us is the opinion of certain railway experts, and yet their evidence shows that they are far from having such complete data as to enable them to give anything more than an opinion. As was said by Woods, Justice, in *Tilley v. Railroad Co.*, 5 Fed. 641, 632, in a case where the evidence had been conflicting or uncertain as to the probable remunerative effect of a new tariff, "which view is the correct one it is impossible to decide. There is, however, a conclusive way and one only in which this controversy can be settled and that is by experiment. A reduction in railroad charges is not always followed by a reduction of either gross or net income. It can soon be settled which is right, the Railroad Company's officers or the Railroad Commission, in their view of

the effect of the Commission's tariff of rates by allowing the tariff to go into operation."

This view was cited with approval and adopted in the case of C. B. & Q. R. R. v. Dey, 38 Fed. 556; and again by the Supreme Court of Florida, in P. & A. R. R. v. Florida, 25 Fla. 310; Again in the case of Knoxville v. Knoxville Water Co., 212 U. S. 1; Mr. Justice Moody concludes the opinion as follows: "The Courts in clear cases ought not to hesitate to arrest the operation of a confiscatory law, but they ought to refrain from interfering in cases of any other kind. If hereafter it shall appear under the actual operation of this ordinance (an ordinance fixing maximum water rates for the City of Knoxville) that the return allowed by it operates as a confiscation of property nothing in this judgment will prevent another application to the Court, but as the case now stands there is no such certainty that the rates will necessarily have the effect of denying to the company such a return as would avoid confiscation." And in the case of Wilcox v. The Con. Gas Company, 212 U. S. 19, Mr. Justice Peckham, uses this language, "Where the rate complained of shows

273 in any event a very narrow line of division between possible confiscation and proper regulation, a Court of Equity ought to interfere by injunction before a fair trial has been made of continuing the business under that rate, and thus eliminating as far as is possible the doubt arising from opinions as opposed to facts."

In the case in which this opinion was rendered just as in the case now under consideration, the Court was asked to intervene before there had been any actual experience of the practical result of the rates established.

So in the present case the test of experience will soon make it clear whether the rate imposed by the order of the Public Service Commission can in any proper sense be termed confiscatory or compensatory, if the latter, no injunction ought to issue, while if not compensatory, beyond *nay* doubt an injunction should be granted.

It was suggested in the argument that the effect of putting into operation the tariff established by the Commission would be to require a lowering of interstate tariffs as well; but this by no means follows, because the two services are radically different, and the one is by no means a conclusive measure for the other, and among the points decided by the Minnesota Rate Cases, 230 U. S. 352, were the following: 1st., that Congress has not by the creation of the Interstate Commerce Commission sought to establish a unified control over interstate and intrastate rates; 2nd., that the fixing of reasonable rates for intrastate transportation was left with the States, and the agencies created by the States to deal with; and 3rd., that the inter-blending of operations in the conduct of interstate and local business, and the exigencies that are said to arise with respect to the maintenance of interstate rates by reason of their relation to intrastate rates are consideration for the practical judgment of Congress. And in connection with this last point, it is to be observed

274 that up to the present time Congress has not undertaken or seen fit to attempt to regulate or interfere with the establishment, maintenance or exercise of supervision over intrastate rates.

It was perhaps unfortunate that the Public Service Commission in its order used the following language: "That its said order of December 21st, 1914, shall continue in force for a period of ten years unless earlier modified or abrogated by the said Commission." It certainly will not require ten years' time of practical experience under the tariff adopted by the Commission to demonstrate whether the rates fixed are confiscatory or compensatory. And while it is true that the order expressly reserves the right to modify or abrogate the order of December 21st, prior to the expiration of ten years, it would have been far better to have avoided even the impression of determining in advance the effect of a new scheme of rates for a definite period of time. Therefore, in affirming the decree of the Circuit Court it will be with a reservation of the right to the Railroad Company after the lapse of a reasonable time to apply to the Commission for a rescission or modification of its order, if experience shall demonstrate that the revenue derived under the tariff as established by the Commission is not properly compensatory for the service performed.

Decree affirmed, with costs.

Filed April 16th, 1915.

275 *Decree of the Court of Appeals of Maryland.*

Court of Appeals of Maryland, January Term, 1915.

No. 67.

THE PENNSYLVANIA RAILROAD COMPANY, Lessee of the Northern Central Railway Company,
vs.

ALBERT G. TOWERS et al., Constituting the Public Service Commission of Maryland.

The Appeal in this case standing ready for hearing, was argued by Counsel for the respective parties, and the proceedings have since been considered by the Court.

It is thereupon, this sixteenth day of April, 1915, by the Court of Appeals of Maryland, and by the authority thereof adjudged, ordered and decreed that the decree of the Circuit Court No. 2 of Baltimore City, passed in the above entitled cause on the eighth day of January, 1915, be and the same is hereby affirmed, with costs.

A. HUNTER BOYD.
JOHN P. BRISCOE.
N. CHARLES BURKE.
WM. H. THOMAS.
HAMMOND URNER.
HENRY STOCKBRIDGE.
ALBERT CONSTABLE.

Filed April 16th, 1915.

Whereupon the following judgment of the Court was entered,
to wit:

"1915, April 16", Decree affirmed with costs.
Op.

STOCKBRIDGE, J.

276 *Petition for Writ of Error and Order of Court Thereon.*

In the Court of Appeals of Maryland.

THE PENNSYLVANIA RAILROAD COMPANY, Lessee of the Northern
Central Railway Company,

vs.

ALBERT G. TOWERS, E. CLAY TIMANUS, and W. LAIRD HENRY,
Constituting the Public Service Commission of Maryland.

To the Honourable A. Hunter Boyd, Chief Judge of the Court of
Appeals of Maryland:

The Petition of the Pennsylvania Railroad Company respectfully
shows;

1. That on the 8th day of January, 1915, the Circuit Court No.
2 of Baltimore City, wherein the bill of complaint in this cause was
pending, did upon the demurrer of the defendants pass a decree
sustaining said demurrer and dismissing your petitioner's said bill
of complaint, from which decree your petitioner appealed to this
Honourable Court.

2. That your Petitioner's said appeal came on to be heard in this
Court at the January Term thereof in this present year and on the
16th day of April of this same year this Court passed a decree af-
firming the said decrees of said Circuit Court No. 2 of Baltimore
City, and that said decree of this Court is a final decree in this
cause.

277 3. That by said decision of this Honourable Court there
is drawn in question the validity of a statute or statutes of
the State of Maryland and an authority excised thereunder and
under said State on the ground of their being repugnant to the
Constitution of the United States, and the said decision is in favor
of their validity, all of which will fully appear by reference to the
record of this cause in this Court.

4. That accordingly your Petitioner is advised and believes and
therefore avers that it is entitled to have said decision of this Honour-
able Court and its said decree re-examined upon writ of error in
the Supreme Court of the United States, in order that the same may
be reversed for the errors set forth in the assignment of errors here-
with submitted.

Wherefore, your Petitioner prays that a writ of errors may issue in
its behalf from the Supreme Court of the United States for the
correction of the errors complained of, and that a transcript of the

record, proceedings and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

And as in duty, &c., &c.

JOHN J. DONALDSON,
SHIRLEY CARTER,
C. H. CARTER,

For Petitioner, The Pennsylvania Railroad Company.

278

In the Court of Appeals of Maryland.

THE PENNSYLVANIA RAILROAD COMPANY, Lessee of the Northern Central Railway Company,

vs.

ALBERT G. TOWERS, E. CLAY TIMANUS, and W. LAIRD HENRY,
Constituting the Public Service Commission of Maryland.

Ordered, this 28th day of July 1915, upon the foregoing petition of the Pennsylvania Railroad Company, and the assignment of errors therewith submitted, that a writ of error be, and hereby is allowed to have reviewed in the Supreme Court of the United States the decree heretofore entered herein, and that the amount of bond on said writ of error, be and hereby is, fixed at the sum of two thousand dollars.

A. HUNTER BOYD,
Chief Judge of the Court of Appeals of Maryland.

Filed August 2nd, 1915.

279 *Assignment of Errors and Prayer for Reversal.*

In the Supreme Court of the United States.

THE PENNSYLVANIA RAILROAD COMPANY, Lessee of the Northern Central Railway Company, Plaintiff in Error,

vs.

ALBERT G. TOWERS, E. CLAY TIMANUS, and W. LAIRD HENRY,
Constituting the Public Service Commission of Maryland, Defendants in Error.

Error to the Court of Appeals of Maryland.

Assignment of Errors on Writ of Error from Supreme Court of the United States.

Comes now before the Justices of the Supreme Court of the United States, in the City of Washington, the said Pennsylvania Railroad Company, plaintiff in error herein, by John J. Donaldson, Charles H. Carter and Shirley Carter, its Solicitors, and says that in the record and proceedings in said cause there is manifest error, to wit:

The Court of Appeals of Maryland in affirming the decree of

Circuit Court No. 2 of Baltimore City, entered in the above entitled cause on the 8th day of January A. D., 1915, whereby the demurrer filed by the Public Service Commission of Maryland to the Bill of Complaint herein was sustained and the Bill of Complaint was dismissed with costs, committed error which should be reviewed and corrected in and by the Supreme Court of the United States.

The Federal questions presented by the record and intended to be argued under the above general assignment of error are as follows:

(1) As by the express terms of the Acts of Assembly of the State of Maryland constituting the charter of The Northern Central Railway Company, specifically identified in the Bill of Complaint, 280 it was and is provided:

"That the president and directors of said company shall have power to charge for the transportation of passengers on their road, any sum of money not exceeding six cents per mile as in their discretion may seem expedient."

The order of the Public Service Commission of Maryland, dated December 21, 1914, complained of in and by said Bill of Complaint, because it required The Pennsylvania Railroad Company, as Lessee of the Northern Central Railway Company, to sell certain tickets for the transportation of persons within the State of Maryland over the lines of the latter Company as follows:

- (a) 100 trip commutation tickets.
- (b) 10 strip (trip) tickets.
- (c) 60 trip individual monthly commutation ticket.
- (d) 46 trip individual monthly school ticket.
- (e) 180 trip quarterly commutation ticket.
- (f) Round trip tickets at not to exceed 2½ cents a mile.

continued in force by the decree of the Court of Appeals of Maryland constitutes a law of the State of Maryland which impairs the obligation of the contract between said State and the Northern Central Railway Company (lessor of The Pennsylvania Railroad Company, plaintiff in error) contrary to the provisions of section 10 of Article 1 of the Constitution of the United States.

(2) In upholding as valid so much of the Act of the Assembly of Maryland known as the "Public Service Commission Law" codified as section 435 of Article 23 (Annotated Code of Maryland, 1911, Volume 1) and so much of chapter 162 of the Acts of Assembly of 1912, codified as 435A, (Annotated Code, Volume 3) amendatory of the foregoing, as purported to empower the Public Service Commission of Maryland to require common carriers of passengers within said State to issue mileage, excursion, school commutation and commutation passenger tickets upon such rates as the Commission 281 may deem reasonable and proper, the decree of the Court of Appeals of Maryland contravened not only the provisions of section 10, Article 1 of the Constitution of the United States, but if permitted to remain in effect and unreversed, will deprive appellant of the equal protection of the laws and also of its property without due process of law, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

(3) It was and is not legally competent for the Public Service Commission of Maryland to require the Pennsylvania Railroad Company as lessee of the Northern Central Railway Company or otherwise to issue and sell tickets of the classes prescribed in said order of December 21, 1914, for the transportation of passengers within the State of Maryland, upon the terms and conditions in said order specified, for the reason that said Commission having authorized higher or maximum rates and charges for the transportation of such passengers can not lawfully further regulate the affairs of that Company by requiring it to make exceptions to the maxima so authorized in favor of some of such passengers, and to the extent that such exception is availed of it would deprive said Company of its property without due process of law and of the equal protection of the laws, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

(4) By reason of tariff provisions filed with the Interstate Commerce Commission under the provisions of the Act of Congress known as the Act to Regulate Commerce, other higher and different rates and limitations respecting passenger travel over the lines of the Northern Central Railway Company were enforced at the date of issuing the order of the Public Service Commission complained of, wherefore said order, by reason of the conflict with the provisions of said Act to Regulate Commerce, engendered by its own terms, was rendered void by virtue of the provisions of section 8 of Article 1 of the Constitution of the United States.

282 (5) That the said Court of Appeals of Maryland erred in its said decree affirming the decree of Circuit Court No. 2 of Baltimore City, because this plaintiff in error was thereby denied the relief prayed in its said Bill of Complaint, viz: a decree declaring void and of none effect and setting aside the orders of the Public Service Commission of Maryland in said Bill of Complaint referred to.

(6) That the said Court of Appeals of Maryland erred in its said decree affirming the decree of Circuit Court No. 2 of Baltimore City because the Plaintiff in Error was thereby denied the relief prayed in its Bill of Complaint, viz: an injunction restraining said Public Service Commission, its members and agents, or anyone assuming to act by authority thereof, from enforcing or attempting to enforce the said Order of said Commission.

(7) That the said Court of Appeals of Maryland erred in its decree affirming the decree of Circuit Court No. 2 of Baltimore City, because thereby the rates and time limitations for passengers' tickets prescribed by said Order of the Public Service Commission of Maryland, claiming to act therein by authority of a statute or statutes of the State of Maryland, were left in full force and effect, although such rates and time limitations were such as to require this Plaintiff in Error to continue to run the passenger business of the Northern

Central Railway line, and especially the Baltimore Division 283 of the same, and of the part thereof between Baltimore and Parkton, Maryland, at a loss much less allow this Plaintiff in Error to receive a fair and reasonable revenue therefrom; and that such rates and limitations will relieve certain classes of passenger

travel thereon of their fair share of the cost of the same at the expense of the rest and of the freight traffic on said line, and that this accordingly constitutes an unlawful discrimination and accordingly is a violation of the Constitution of the United States.

(8) That the said Court of Appeals of Maryland erred in its decree affirming the decree of Circuit Court No. 2 of Baltimore City, because thereby said orders of the Public Service Commission of Maryland passed under the assumed authority of statutes of the State of Maryland by reason of the rates and limitations therein requiring this Plaintiff to carry certain classes of passengers for a compensation that would not merely fail to give a fair and reasonable return for the service, but fall far short of the same, were maintained in full force and effect, thus constituting a taking of this plaintiff's property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

(9) That the said Court of Appeals of Maryland erred in its decree affirming the decree of Circuit Court No. 2 of Baltimore City, because said orders of the Public Service Commission of Maryland were thereby maintained in full force and effect, although the line of Railway referred to in the proceedings in this cause is an inter-state line, running through the states of Pennsylvania and New York, as well as the State of Maryland, and theretofore other and higher rates for the same classes of passenger service were 284 in effect as to inter-state travel by authority of the Interstate Commerce Commission of the United States, under and by virtue of the Acts of Congress in such case made and provided, and accordingly said orders of the Public Service Commission of Maryland constituted a discrimination against interstate travel in favor of travel within the State of Maryland, and hence are void as being in conflict with the Acts of Congress made by authority of the so-called "Congress Clause" of the United States Constitution, and in violation of said Constitution.

Wherefore, the said Pennsylvania Railroad Company, Plaintiff in Error, prays that the said decree of the Court of Appeals of Maryland be reversed, annulled and held for nothing, and that it may be restored to all things which it has lost by reason of the said decree.

JOHN J. DONALDSON,
SHIRLEY CARTER,
C. H. CARTER,

For the Pennsylvania Railroad Company,
Plaintiff in Error.

Filed August 2nd, 1915.

Bond with Approval Thereon.

In the Supreme Court of the United States.

THE PENNSYLVANIA RAILROAD COMPANY, Lessee of the Northern Central Railway Company, Plaintiff in Error,
vs.

ALBERT G. TOWERS, E. CLAY TIMANUS, and W. LAIRD HENRY, Constituting the Public Service Commission of Maryland, Defendants in Error.

Error to the Court of Appeals of Maryland.

Know all men by these presents:

That we, the Pennsylvania Railroad Company, as principal, and Michael Jenkins, of Baltimore City, State of Maryland, as surety, are held and firmly bound unto Albert G. Towers, E. Clay Timanus, and W. Laird Henry, Defendants in Error, above named, in the sum of Two Thousand Dollars (\$2,000.00) to be paid to the said obligee, their executors or administrators, to which payment well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our successors, heirs and personal representatives, firmly by these presents.

Sealed with our seals and dated this 28th day of July, Nineteen Hundred and Fifteen.

Whereas, the above named Plaintiff in Error, the Pennsylvania Railroad Company, has sued out a writ of error from the Supreme Court of the United States to the Court of Appeals of Maryland to reverse the decree in the above entitled cause by the said

286 Court of Appeals of Maryland:

Now, therefore, the condition of this obligation is such that if the Pennsylvania Railroad Company shall prosecute its said Writ of Error to effect and shall answer all damages and costs that may be awarded against it should it fail to make said writ good, then the above obligation to be void; otherwise to remain in full force and effect.

[Seal's place.]

THE PENNSYLVANIA RAILROAD COMPANY,
By GEO. D. DIXON, *Vice-President.*

Attest:

J. TANEY WILLCOX,
Ass't Secretary.

Signed, Sealed and Delivered in the presence of:

J. MICHAEL JENKINS. [SEAL.]

Witness:

J. J. NELLIGAN.

This Bond approved as to form, amount and sufficiency of the surety.

A. HUNTER BOYD,
Chief Judge of the Court of Appeals of Maryland.

Filed August 2nd, 1915.

287 UNITED STATES OF AMERICA, *To wit:*

The President of the United States to the Honorable the Judges of the Court of Appeals of the State of Maryland, Greeting:

Because, in the record and proceedings, as also in the rendition of the decree in a cause which is in the said Court of Appeals of Maryland, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between The Pennsylvania Railroad Company, Lessee of the Northern Central Railway Company, Plaintiff and Plaintiff in Error, and Albert G. Towers, E. Clay Timanus, and W. Laird Henry, constituting the Public Service Commission of Maryland, Defendants and Defendants in Error, wherein were drawn in question the validity of a statute or statutes of or an authority exercised under, said State on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of such their validity, a manifest error had happened to the great damage of the said Pennsylvania Railroad Company, Plaintiff in Error, as by its complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same,

to the Supreme Court of the United States, together with 288 this writ, so that you may have the same at Washington not more than thirty days from the date hereof, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honourable Edward D. White, Chief of the Supreme Court of the United States, the 28th day of July Nineteen Hundred and fifteen.

[Seal United States District Court, Maryland.]

ARTHUR L. SPRAMER,
Clerk District Court of the United States for the District of Maryland.

Allowed by the Honourable A. Hunter Boyd, Chief Judge of the Court of appeals of Maryland.

A. HUNTER BOYD.

289 [Endorsed:] In the Supreme Court of the United States.
 The Pennsylvania Railroad Company, Lessee of the Northern Central Railway Company, vs. Albert G. Towers, E. Clay Timanus, and W. Laird Henry, Constituting the Public Service Commission of Maryland. Writ of Error to the Court of Appeals of Maryland. Filed August 2d, 1915.

290 UNITED STATES OF AMERICA, *To wit*:

The President of the United States to Albert G. Towers, E. Clay Timanus and W. Laird Henry, constituting the Public Service Commission of Maryland, Greeting:

You are hereby cited and admonished to appear in the Supreme Court of the United States to be held at the City of Washington within thirty days from the date of this Writ, pursuant to a Writ of Error from said Court to the Court of Appeals of Maryland, wherein the Pennsylvania Railroad Company, Lessee of the Northern Central Railway Company, is plaintiff, and you are Defendants in Error, to show cause, if any there be, why the decree in said Writ of Error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honourable Edward D. White, Chief Justice of the Supreme Court of the United States of America, this 28th day of July, Nineteen Hundred and fifteen.

A. HUNTER BOYD,

Chief Judge of the Court of Appeals of Maryland.

291 [Endorsed:] In the Supreme Court of the United States.
 The Pennsylvania Railroad Company, Lessee of the Northern Central Railway Company, vs. Albert G. Towers, E. Clay Timanus, and W. Laird Henry, Constituting the Public Service Commission of Maryland. Citation in Error. Service of the within citation acknowledged this 31 day of July 1915. W. Cabell Bruce, Atty for Public Service Commission of Maryland. Filed August 2d 1913.

292 STATE OF MARYLAND, *sct*:

I, C. C. Magruder, Clerk of the Court of Appeals of the State of Maryland do hereby certify that the said Court is the highest Court of law and Equity in said State in which a decision can be had.

I further certify that the foregoing is a true transcript of record, supplemental record, opinion of the Court and judgment entered thereon, petition for writ of error, assignment of errors and order of Court thereon, and Bond with approval thereon endorsed, in the case there stated.

And in obedience to the commands of the within writ I now transmit said transcript of record together with the original writ of error and the original citation in said cause to the Supreme Court of the United States.

In Testimony Whereof I hereunto subscribe my name and the

seal of the Court of Appeals of Maryland affix this 16th day of August, A. D. 1915.

[Seal Court of Appeals, Maryland.]

CALEB C. MAGRUDER,
Clerk of the Court of Appeals of Maryland.

Appellant's Costs:

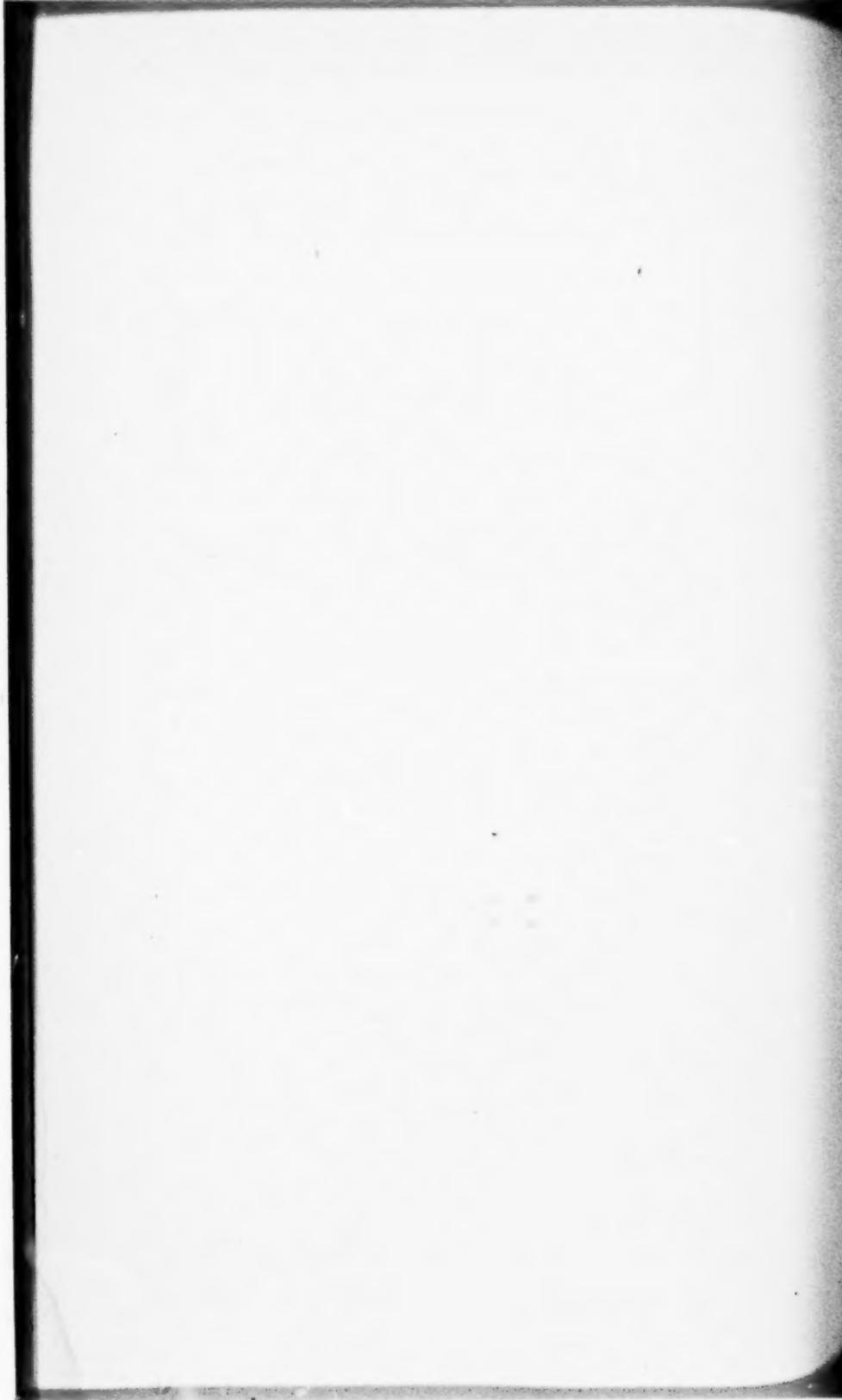
Record	\$400.00
Brief	25.00
Attorney	10.00
Clerk	1.30
	<hr/>
	\$436.30

Transcript	90.15
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Appellee's Costs:

Brief	\$61.50
Attorney	10.00
Clerk	2.00
	<hr/>
	\$73.50

Endorsed on cover: File No. 24,883. Maryland Court of Appeals, Term No. 221. The Pennsylvania Railroad Company, Lessee of The Northern Central Railway Company, Plaintiff in Error, vs. Albert G. Towers, E. Clay Timanus, and W. Laird Henry, constituting The Public Service Commission of Maryland. Filed August 19th, 1915. File No. 24,883.



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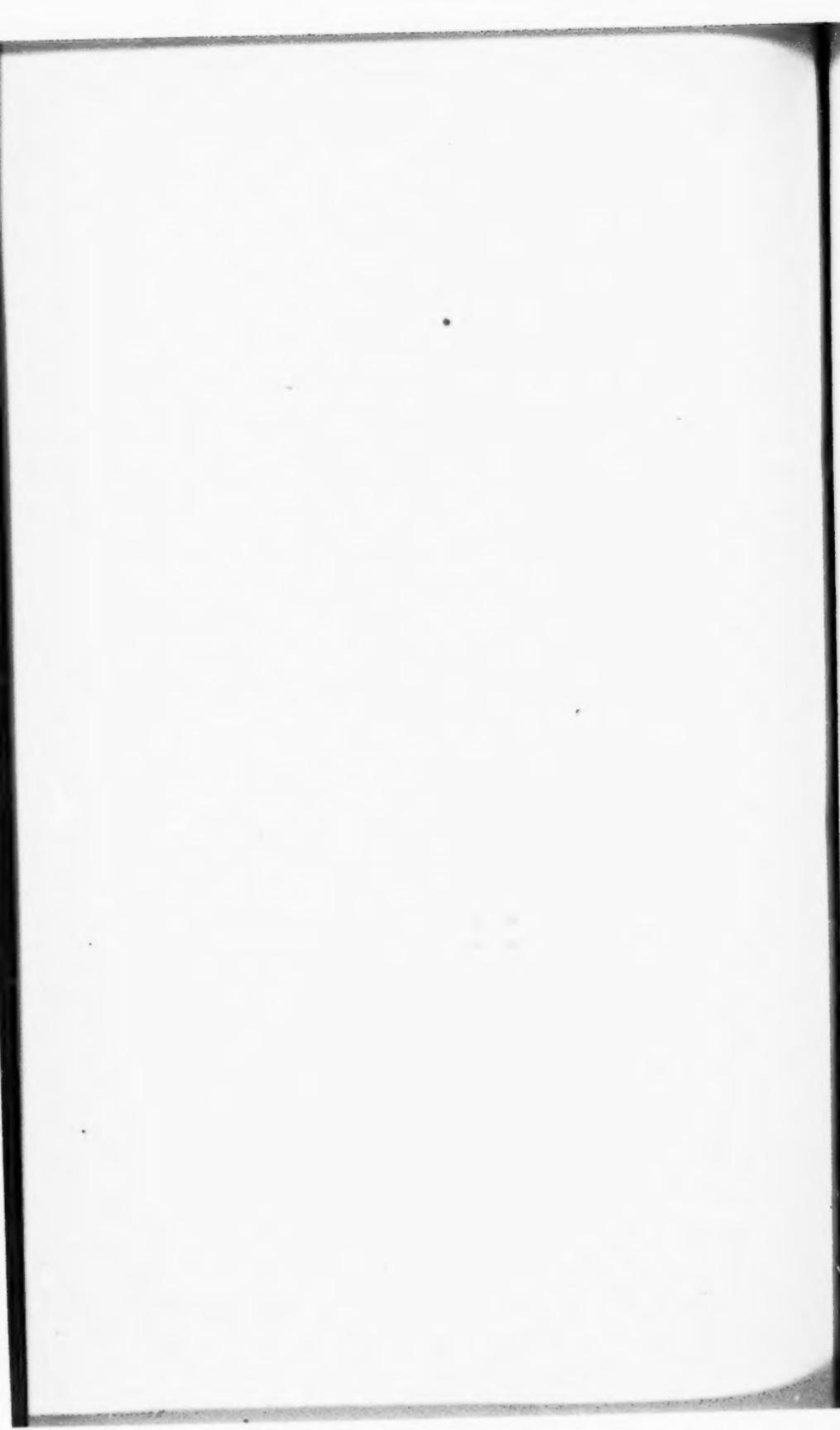
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 221.

THE PENNSYLVANIA RAILROAD COMPANY, LESSEE OF THE NORTHERN CENTRAL RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

ALBERT G. TOWERS, E. CLAY TIMANUS, AND W. LAIRD HENRY, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

BRIEF FOR PLAINTIFF IN ERROR.

Preliminary Statement.

This bill in equity was filed in Circuit Court No. 2 of Baltimore City by the Pennsylvania Railroad Company as lessee of the Northern Central Railway Company, to test the validity of an order of the Public Service Commission of Maryland,

which "notified and required" said Pennsylvania Railroad Company "to sell tickets for the transportation of persons entirely within the State of Maryland, over the line of railway known as the Northern Central Railway," in substance as follows (R., 14, 15):

(a) 100-trip commutation tickets, in form prescribed, good for four months from date of issue, at a rate materially less than the standard rate of two and one-half cents a mile, established by tariff schedules on file with said Public Service Commission as the regular one-way rate for a single passenger.

(b) 10-strip ticket in form prescribed, good for three months from date of issue, at not to exceed two cents per mile.

(c) 60-trip individual monthly commutation ticket in form prescribed, good for one month from date of issue, at not to exceed twenty-five cents in excess of two cents for the first three miles and one-fourth of a cent for each additional one-half mile.

(d) 46-trip individual monthly school ticket in form prescribed, good for one month from date of issue, at not to exceed forty-six sixtieths (46/60) of the next above prescribed rate.

(e) 180-trip quarterly commutation ticket in form prescribed, good for three months from date of issue, at not to exceed seventy-five cents in excess of two cents a mile for the first three miles and one-fourth of a cent for each additional one-half mile, less ten per cent.

(f) Round-trip tickets in form prescribed at not to exceed two and one-quarter cents per mile.

Said order by its amended terms to be "in force for a period of ten years (from December 21, 1914), unless earlier modified or abrogated by the said Commission."

Prior to the inception of the proceedings before the Public Service Commission which eventuated in said order, the complainant company and its lessor, Northern Central Railway Company, had been accustomed to sell to persons applying therefor, in accord with schedules duly filed with said Public Service Commission, certain forms of tickets at less than the standard two and one-half cents a mile for a single one-way ticket, for example (R., 3):

- (a) Round-trip ticket at not exceeding two and one-fourth cents per mile.
- (b) 10-strip one-way ticket good for one year at one and eight-tenths cents per mile.
- (c) 100-trip ticket, good within the year in which issued at double the 60-trip rate (next below).
- (d) 60-trip ticket, good within the month of issue, at two cents for first three miles and one-fourth of one cent for each additional mile or fraction thereof.
- (e) 180-trip ticket good within the quarter in which issued at the same rate as next above, less ten per cent.
- (f) 46-trip school ticket, good within the month in which issued at forty-six sixtieths of the price fixed for the 60-trip ticket.

The proceedings before and by the Public Service Commission resulted from the filing in No-

vember, 1914, with the said Commission of new schedules, whereby the complainant company, plaintiff in error here, making no change in the standard rate for single one-way transportation, sought to make "certain changes in (the rates to be charged for) the reduced-rate tickets" of the classes above specified, particularly to abolish and discontinue from sale the one-hundred-trip ticket; and both to alter the effective limits and to somewhat increase the previously scheduled rates of charges for the round trip, ten-trip strip (punch), sixty-trip, one hundred and eighty trip, and forty-six trip school tickets (R., 3).

The rates previously in force and particulars, wherein they were attempted to be altered by the Railroad Company, and the action of the Public Service Commission upon each of the proposed alterations is conveniently exposed in the opinion of the Court of Appeals at page 144 of the record.

Averring, by its said bill in equity, that the order in question of the Public Service Commission constituted a taking of plaintiff's property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States, which if enforced would in the circumstances work a discrimination against interstate travel in favor of travel wholly within the State, and was otherwise unreasonable and void (R., 6), plaintiff company prayed that said orders be declared void, and that said Public Service Commis-

sion and all purporting or assuming to act by or under its authority be enjoined from enforcing or attempting to enforce the same. A transcript of the proceedings had before the Public Service Commission, including a complete transcript of the testimony submitted to it, was filed with the bill of complaint in the style of exhibits in support of its various averments, and was made part thereof (R., 7-139).

To the bill of complaint and exhibits so filed defendant Public Service Commission filed its demurrer, asserting want of equity (R., 139).

Upon hearing, after argument, the demurrer was sustained and plaintiff standing upon its bill as filed, same was decreed to be dismissed with costs (R., 140).

From this decree appeal to the Court of Appeals of Maryland was prayed and duly perfected (R., 141), and upon consideration, after argument, the appellate tribunal affirmed the decree complained of (R., 156).

The opinion of the Court of Appeals of Maryland is reported in 126 Maryland, 59, and is set forth in the transcript of record at pages 143 to 156, inclusive.

The Court of Appeals, stating that the question presented by the record was not "whether it is

within the power of the Public Service Commission to require the establishment of a schedule of commutation rates by a railway company in a case where no such rates had theretofore existed," but was as to the existence and extent of the power on part of the Commission "where such a system of (commutation) rates had long been in operation by the action of the company, and where a modification of those rates was proposed by the railway company and by it submitted to the Commission," observed that "Whether commutation rates shall be established at all is a question of policy upon the part of the company, but if such a policy is adopted there still remains the reasonableness of the manner in which that policy is carried out" (R., 144). Conceding that the Public Service Commission has "no power or authority to make any order, except in so far as the authority is distinctly conferred upon it by the legislature" the Court of Appeals asserted that chapter 162 of the Laws of Maryland, 1912,

"clearly confers upon the Commission full power, so far as it is within the province of the legislature to grant it, to supervise and regulate all tariffs and transportation charges within the State, including by its very terms, commutation rates" (R., 145),

and after an extended citation and discussion of authorities, including, among others, the case of *Lake Shore & Michigan Southern Ry. Co. vs.*

Smith, 173 U. S., 684, strongly relied upon by complainant, concluded that—

“From these citations it will be apparent that the limitations placed upon legislative action do not go to the extent of saying that the establishment by State authority of a maximum single rate exhausts the power of State regulation, or that there may not be different rates for different characters of service. In the interest of the public there subsists and must subsist in the State the power to control and prevent exorbitant or extortionate charges for services performed. While at the same time that regulation must be reasonable in its character and so framed as under ordinary or normal conditions to bring about a proper return to the railroad for the service performed independent of the return to the railroad from other and a different character of service” (R., 149, 150).

Assignments of Error.

The assignments of error are set forth at length in the transcript of record at pages 159 and following, but those here relied upon for reversal may be restated more succinctly as follows:

1. Error on part of the Court of Appeals of Maryland in finding and decreeing that the Public Service Commission of Maryland is possessed of power to require plaintiff in error as lessee of the Northern Central Railway Company or otherwise to issue and sell upon the terms and conditions pre-

scribed in its said order complained of, classes of tickets for the transportation of passengers within the State of Maryland at rates less than the legally established reasonable or normal standard one-way fare for a single passenger between identical points when moving in the same direction, such lesser rates and fares when applied constituting exceptions from the authorized and legal maxima and to the extent applied depriving plaintiff in error of its property and of the equal protection of the laws, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

2. Error on part of the Court of Appeals in sustaining the order of the Public Service Commission of Maryland complained of, notwithstanding its conflict with the provisions of certain tariff schedules filed by plaintiff in error with the Interstate Commerce Commission and still in force under the provisions of the Act to Regulate Commerce.

Pertinent Provisions of the Public Service Commission Law of Maryland.

The law of 1910 as amended by laws of 1912 and 1914 provides for the creation of a Public Service Commission (sec. 2) and specifies and defines its jurisdiction, powers, and duties in pertinent part as follows:

SEC. 3. That the jurisdiction, supervision, powers, and duties of the Public Service Commission * * * shall extend under this Act,

1. To railroads * * * lying within this State, and to the person or corporation owning, leasing, operating or controlling the same.

4. To any common carrier operating or doing business within the State.

SEC. 10. And in all investigations, inquiries or hearings the Commission, or a Commissioner, shall not be bound by the technical rules of evidence.

SEC. 12. That this Act shall apply to the transportation of passengers, freight or property from one point or another within the State of Maryland, and to any common carrier performing such service; and this Act shall be so applicable and be so construed as to be free from conflict with those provisions of the Constitution of the United States and the laws in pursuance thereof relating to interstate commerce.

SEC. 13. * * * All charges made or demanded by any such common carrier for the transportation of passengers * * * shall be just and reasonable and not more than allowed by law or by order of the Commission, conformably with the law. Every * * * charge made or demanded for * * * transportation of passengers * * * in excess of that allowed by law or by order of the Commission, conformably with the law, is unlawful and prohibited.

SEC. 15. That every common carrier shall file with the Commission * * * and shall print and keep open to public inspection, schedules showing the rates, fares, and charges for the transportation of passengers * * * within the State between each point upon its route. * * *

Unless the Commission otherwise orders, no change shall be made in any rate, fare or charge * * * which shall have been filed and published

by a common carrier in compliance with the requirements of this Act, except after thirty days' notice to the Commission and publication for thirty days * * * and all proposed changes shall be shown by printing, filing, and publishing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection.

SEC. 16. That no common carrier shall * * * charge, demand, collect or receive from any person * * * a greater or less compensation for any service rendered or to be rendered in the transportation of passengers * * * than it charges, demands, collects or receives from any other person * * * for doing a like and contemporaneous service in the transportation of a like kind of traffic under the same or substantially similar circumstances and conditions.

* * * * *

Provided, further, that nothing in this Act shall prevent the issuance of mileage, excursion, school commutation, or commutation passenger tickets, or half-fare tickets for the transportation of children under twelve years of age, or joint interchangeable mileage tickets, with special privilege as to the amount of free baggage that may be carried under mileage tickets of one hundred miles or more. But before any common carrier, subject to the provision of this Act, shall issue any such mileage, excursion, school commutation, commutation passenger ticket, half-fare tickets, or joint interchangeable mileage ticket, with special privileges as aforesaid, it shall file with the Commission copies of the tariffs of rates, fares, or charges on which such tickets are to be based, together with the specifications of the amount of free baggage permitted to be carried under such joint interchange-

able mileage ticket, in the same manner as common carriers are required to do with regard to other rates by this Act.

SEC. 23A. That whenever the Commission shall be of the opinion after a hearing upon its own motion or upon a complaint made as provided in this Act, that the issuance by common carriers in this State, of mileage excursion, school commutation, or commutation passenger tickets, and joint interchangeable mileage tickets, would be a desirable, advantageous, and reasonable thing for the people concerned to demand, it shall be the duty of the Commission to order the common carrier, or common carriers to establish such rates and issue such tickets as the said Commission may deem reasonable and proper; such tickets to be good on any or all branches, lines, or sections of the carrier's route in this State, or only on certain specific branches, lines, or sections as the Commission may order and direct.

SEC. 43. That any corporation subject to this Act, or any of the provisions of this Act, and any person in interest being dissatisfied with any order of the Commission, fixing any rate or rates, tolls, charges, schedules, joint rate, or rates, or any order fixing any regulations, practices, acts, or service, may commence any action in the circuit court for any county, or before any judge of the Supreme Bench of Baltimore City, in any court of Baltimore City of appropriate jurisdiction which may be adopted for the purpose, against the Commission as defendant to vacate and set aside any such order on the ground that the rate or rates, tolls, charges, schedules, joint rate, or rates, fixed in such order is unlawful, or that any such regulation, practice, act, or service fixed in such order is unreasonable, in which action a copy of the complaint shall be served with the summons.

* * * * *

No injunction shall issue suspending or staying any order of the Commission, except upon application to one of the judges of the Supreme Bench of Baltimore City, or to the circuit court of one of the counties, and upon notice to the Commission and after hearing.

SEC. 44½. That before the trial of such action a transcript duly certified by the Secretary of the Commission of all the papers and proceedings, including evidence, in the case before the Commission except such as are omitted by the stipulation in writing of the parties to such action, shall be filed by the Commission in such action and shall be evidence in like manner as the originals transcribed.

SEC. 46. And be it further enacted, That in all trials, actions, and proceedings arising under the provisions of this Act, or growing out of the exercise of the authority and powers granted herein to the Commission, the burden of proof shall be upon the party adverse to such Commission, or seeking to set aside any determination, requirement, direction or order of said Commission, to show by clear and satisfactory evidence that the determination, requirement, direction, or order of the Commission complained of is unreasonable or unlawful, as the case may be.

As matter of interest, though not immediately pertinent to the particular matter now at issue between plaintiff in error and the Public Service Commission of Maryland, it may be noted that by an Act approved April 10, 1914 (Laws of Maryland, 1914, ch. 667, page 1132), every railroad corporation operating a railroad in the State of Maryland is required, subject to an action for damages in the event of refusal, to

"keep for sale mileage books, good for one thousand or less miles of travel, and all such mileage books shall entitle the holder or bearer thereof, or any person or persons accompanying said holder or bearer, to travel on the presentation of said mileage book on the passenger trains of the railroad owned, controlled, or operated by such corporation issuing said book and all the lines thereof for the number of miles equal to the coupons detached or canceled by the conductor of such railroad, and such conductor shall not detach or cancel from such mileage book more miles than the number of miles traveled, and such mileage book shall entitle the holder or bearer thereof and the parties entitled to use the same to the same rights and privileges in respect to the transportation of themselves and baggage or property to which the holders of the highest-class ticket issued by such corporation is entitled."

ARGUMENT.

In its opinion in the so-styled "Five Per Cent Case," decided July 29, 1914 (31 I. C. C. Rep., 351), wherein proposed rate increases in Official Classification territory were discussed at length, the Interstate Commerce Commission called attention of the carriers to the fact that—

"The proposed advance in rates is limited to freight traffic; * * * Yet practically every railroad seeking approval of these increases in freight rates maintains a passenger service also; and passenger train revenues amount to more than twenty-four per cent of the total transportation revenues of the carrier,"

and that while

"The unit of cost of moving certain kinds of bulk freight carried in large volume appears to have been reduced by more efficient operating methods despite increases in the rate of wages; on the other hand, the unit of cost of moving passengers has been almost uniformly increased, independently of the effect of wage advances, through the use of heavier equipment, the adoption of safety devices, and better service" (p. 387).

* * * * *

"The information available indicates that not only is the operating ratio of the passenger-train service much greater than that of the freight-train service, but that the ratio of property investment to gross earnings is much greater in the passenger service. Hence the ratio of capital charges, and usually also the ratio of the taxes attributable to passenger service, is much greater than the ratios attributable to the freight service. Thus, on the Pennsylvania Railroad the estimated property investment per dollar of freight earnings was \$4.48 in 1909, \$4.16 in 1910, \$4.29 in 1911, and for each dollar of passenger-train earnings was \$7.60 in 1909, \$7.15 in 1910, and \$10.66 in 1911. In 1911 the property devoted to the passenger-train service earned much less than one-half of 1 per cent, while that devoted to the freight-train service earned 7.09 per cent" (p. 389).

Concluding that the carriers concerned in that case not only needed, but were entitled to "such additional revenue as would be produced by a five

per cent increase, as modified herein, and possibly more" (p. 404), the Commission suggested tentatively various means by which the carriers might secure additional revenues "otherwise than by resorting to a general advance in their freight rates," among others being increases in passenger fares and extra charges for special accommodations, and said that "the traveling public is giving expression to its demands for better service, better accommodations, and for the adoption by carriers of all the devices that make for safety. A public that demands such a service cannot reasonably object to the payment of a reasonable compensation therefor" (p., 407).

It was pursuant to this suggestion of the Interstate Commerce Commission that the Pennsylvania Railroad Company in November, 1914, pursuant to the provisions and requirements of sections 15 and 16 of the Public Service Commission law of Maryland, filed its revised schedule of rates which proposed among other things to abolish and remove from sale the so-called Excursion ticket and 100-Trip. ticket, which it had theretofore been accustomed to sell, and to slightly increase the so-called subnormal rates at which certain other special classes of tickets had been sold, but made no attempt to change the long-established standard rate of $2\frac{1}{2}$ cents a mile for all one-way tickets for a single passenger.

As a result of its action in such regard, proceedings were instituted against the Pennsylvania Railroad Company before the Public Service Commission of Maryland by The Ruxton Improvement Association and the Lutherville Improvement Association, which resulted in the entry of the order subsequently sustained by the courts of Maryland and here under review.

At or about the same time the Pennsylvania Railroad Company filed an amended schedule of passenger fares involving changes in commutation and similar rates for interstate transportation between Washington and its suburbs and between Baltimore and Harrisburg, including points on the very section of its railway lines between Baltimore and Parktown and other points herein involved.

Protest was filed before the Interstate Commerce Commission against the proposed alterations in these interstate rates, but after full hearing by that Commission that protest was dismissed and the new and increased interstate rates proposed by the carrier were sustained (*Macee vs. Pennsylvania Railroad Company*, 37 I. C. C., 268).

Question for Decision.

The question here for decision by this court is not as to the expediency of the order of the Public Service Commission of Maryland nor as to the reasonableness of the rates or the time-limit regula-

tions governing the use of the special tickets established thereby.

It presents so far as this court is concerned, only considerations as to the existence of power on part of the Public Service Commission of Maryland to entertain the protest of the self styled improvement associations and to compel the plaintiff in error to continue the sale of commutation or special class tickets at rates less than the legally established standard or normal one-way single passenger fare and upon terms and regulations as to use more favorable than those extended to the single one-way traveler.

May a State legislature, either directly or through the medium of a public service commission, under the guise of regulating commerce, compel carriers engaged in both interstate and intrastate commerce commingled, to establish and maintain intrastate rates for the benefit of a comparative few, at less than both the interstate and intrastate standard and legally established maxima?

In support of its prayer for reversal based upon this point plaintiff in error relies strongly upon the principles formulated and announced by this court in *Lake Shore & Michigan Southern Railway Company vs. Smith*, 173 U. S., 684, and *Northern Pacific Railway Company vs. North Dakota*, 236 U. S., 585, which while recognizing the power of the State to regulate public carriers in

the interest of the public, denied its right to unreasonably interfere in matters of management or to take the carriers' property without compensation.

As the question for decision is one of power only, no extensive analysis of the testimony given before the Public Service Commission would seem to be required, and for the same reason it would probably simplify the discussion and facilitate its appreciation if we should use by way of illustration but one of the several items covered by the Commission's order, for example say the "One-hundred-trip ticket, good within the year in which issued, at double the 60-trip rate," which ticket the Company proposed to omit from sale, but was by the Commission ordered to be continued in use in the same form as theretofore, save that it should be good for the period of four months from issue instead of one year, and be sold at not to exceed \$1 per ticket over the rate previously charged for said form (R., 14).

It is conceded that the rate prescribed by the Commission for this ticket ordered to be sold contrary to the judgment and will of the Company officers charged with and responsible for the efficient management of its operations was materially less per trip for the number of trips provided than the standard one-way single-fare rate of two and one-half cents per mile—the difference

being approximately one and one-half cents per mile.

That the Commission was without legal power to require the sale of such form of ticket at any price less than the standard one-way single fare was seasonably asserted and has been constantly reiterated at each stage of these proceedings.

In *Lake Shore and Michigan Southern Railway Co. vs. Smith*, 173 U. S., 684, it appeared that the legislature of Michigan by a provision of the general railroad law of that State had required railroad companies doing business within the State to keep on sale one-thousand-mile tickets at a special price which was less than the maximum rate per mile fixed by law, and that such tickets when so required by the purchaser should permit of its use by the wife and children of purchaser as well as by himself.

The company having denied Smith's demand for such ticket made pursuant to the terms of the statute, he sought by mandamus to compel compliance, and his motion to that end was granted. On certiorari the Supreme Court of Michigan affirmed the order and declared that the statute in question applied only to the lines of the carrier operated within the State.

The company defended on the ground that said statute if held to be applicable was opposed to the provisions of the Fourteenth Amendment of

the Constitution of the United States because it deprived the company of its property without due process and also deprived it of the equal protection of the laws.

On writ of error, this court, speaking through Mr. Justice Peckham, and confining itself solely to the question as to the alleged violation of Federal rights guaranteed to the company in the circumstances by the Fourteenth Amendment said (p. 687):

“We will therefore first come to an investigation of the legislative authority with reference to that (Fourteenth) amendment” (p. 687).

* * * * *

“Assuming that the State is not controlled by contract between itself and the railroad company, the question is how far does the authority of the legislature extend in a case where it has the power of regulation, and also the right to amend, alter or repeal the charter of a company, together with a general power to legislate upon the subject of rates and charges of all carriers” * * * (p. 690).

“The question is presented in this case whether the legislature of a State, having power to fix maximum rates and charges for the transportation of persons and property by railroad companies, with the limitations above stated, and having power to alter, amend or repeal their charters, within

certain limitations, has also the right, after having fixed a maximum rate for the transportation of passengers, to still further regulate their affairs and to discriminate and make an exception in favor of certain persons, and give to them a right of transportation for a less sum than the general rate provided by law.

"It is said that the power to create this exception is included in the greater power to fix rates generally; that having the right to establish maximum rates, it therefore has power to (p. 690) lower those rates in certain cases and in favor of certain individuals, while maintaining them or permitting them to be maintained at a higher rate in all other cases. It is asserted also that this is only a proper and reasonable regulation.

"It does not seem to us that this claim is well founded. We cannot regard this exceptional legislation as the exercise of a lesser right which is included in the greater one to fix by statute maximum rates for railroad companies. The latter is a power to make a general rule applicable in all cases and without discrimination in favor of or against any individual. It is the power to declare a general law upon the subject of rates beyond which the company cannot go, but within which it is at liberty to conduct its work in such a manner as may seem to it best suited for its prosperity and success. This is a very different power from that exercised in the passage of this statute. The act is not a general law upon the subject of rates, establishing maximum rates which the company can in no case violate. The legislature having established such maximum as a general law now assumes to interfere with

the management of the company while conducting its affairs pursuant to and obeying the statute regulating rates and charges, and notwithstanding such rates it assumes to provide for a discrimination, an exception in favor of those who may desire and are able to purchase tickets at what might be called wholesale rates—a discrimination which operates in favor of the wholesale buyer, leaving the others subject to the general rule. And it assumes to regulate the time in which the tickets purchased shall be valid and to lengthen it to double the period the railroad company has ever before provided. It thus invades the general right of a company to conduct and manage its own affairs, and compels it to give the use of its property for less than the general rate to those who come within the provisions of the statute, and to that extent it would seem that the statute takes the property of the company without due process of law. We speak of the general right of the company to conduct and manage its own affairs; but at the same time it is to be understood that the company is subject to the unquestioned jurisdiction of the legislature in the exercise of its power to provide for the safety, the health and the convenience of the public, and to prevent improper exactions or extortionate charges from being made by the company.

“It is stated upon the part of the defendant in error that the act is a mere regulation of the public business, which the legislature has a right to regulate, and its apparent object is to promote the convenience of persons having occasion to travel on railroads and to reduce for them the cost of transpor-

tation; that its benefit to the public who are compelled to patronize railroads is unquestioned; that it brings the reduction of rates of two cents per mile within the reach of all persons who may have occasion to make only infrequent trips; and that there is no reason why the legislature may not fix the period of time within which the holder of the ticket shall be compelled to use it. The reduction of rates in favor of those purchasing this kind of ticket is thus justified by the reasons stated.

"The right to claim from the company transportation at reduced rates by purchasing a certain amount of tickets is classed as a convenience. As so defined it would be more convenient if the right could be claimed without any compensation whatever. But such a right is not a convenience at all within the meaning of the term as used in relation to the subject of furnishing conveniences to the public. And also the convenience which the legislature is to protect is not the convenience of a small portion only of the persons who may travel on the road, while refusing such alleged convenience to all others, nor is the right to obtain tickets for less than the general and otherwise lawful rate to be properly described as a convenience. If that were true, the granting of the right to some portion of the public to ride free on all trains and at all times might be so described. What is covered by the word 'convenience,' it might be difficult to define for all cases, but we think it does not cover this case. An opportunity to purchase a thousand-mile ticket for less than the standard rate we think is improperly described as a convenience."

* * * * *

"The power of the legislature to enact general laws regarding (p. 692) a company and its affairs does not include the power to compel it to make an exception in favor of some particular class in the community and to carry the members of that class at a less sum than it has the right to charge for those who are not fortunate enough to be members thereof. This is not reasonable regulation. * * *

"The power to compel the company to carry persons under the circumstances as provided in this act, for less than the usual rates, does not seem to be based upon any reason which has hitherto been regarded as sufficient to authorize an interference with the corporation, although a common carrier and a railroad" (p. 693).

"Regulations for maximum rates for present transportation of persons or property bear no resemblance to those which assume to provide for the purchase of tickets in quantities at a lower than the general rate, and to provide that they shall be good for years to come. This is not fixing maximum rates, nor is it proper regulation. It is an illegal and unjustifiable interference with the rights of the company.

"If this power exist it must include the right of the legislature, after establishing maximum freight rates, to also direct the company to charge less for carrying freight where the party offering it sends a certain amount, and to carry it at that rate for the next two or five or ten years. Is that an exercise of the power to establish maximum freight rates? Is it a valid exercise of the power to regulate the affairs of a corporation? The legislature would thus permit

not only discrimination in favor of the larger freighter as against the smaller one, but it would compel it. If the general power exist, then the legislature can direct the company to charge smaller rates for clergymen or doctors, for lawyers, or farmers, or school teachers, for excursions, for church conventions, political conventions, or for all or any of the various bodies that might desire to ride at any particular time or to any particular place.

“If the legislature can interfere by directing the sale of tickets at less than the generally established rate, it can compel the company to carry certain persons or classes free. If the maximum rates are too high in the judgment of the legislature, it may lower them, provided they do not make them unreasonably low as that term is understood in the law (p. 694), but it cannot enact a law making maximum rates, and then proceed to make exceptions to it in favor of such persons or classes as in the legislative judgment or caprice may seem proper. What right has the legislature to take from the company the compensation it would otherwise receive for the use of its property in transporting an individual or classes of persons over its road, and compel it to transport them free or for a less sum than is provided for by the general law? Does not such an act, if enforced, take the property of the company without due process of law? We are convinced that the legislature cannot thus interfere with the conduct of the affairs of corporations” (p. 695).

“The legislature having fixed a maximum rate at what must be presumed *prima facie*, to be also a reasonable rate, we think the

company then has the right to insist that all persons shall be compelled to pay alike, that no discrimination against it in favor of certain classes of married men or families, excursionists or others, shall be made by the legislature. If otherwise, then the company is compelled at the caprice or whim of the legislature to make such exceptions as it may think proper or to carry the accepted persons at less than the usual and legal rates, and thus to part in their favor with its property without that compensation to which it is entitled from all others, and therefore to part with its property without due process of law (p. 696). The affairs of the company are in this way taken out of its own management, not by any general law applicable to all, but by a discrimination made by law to which the company is made subject. Whether an act of this nature shall be passed or not, is not a matter of policy to be decided by the legislature. It is a matter of right of the company to carry on and manage its concerns subject to the general law applicable to all, which the legislature may enact in the legal exercise of its power to legislate in regard to persons and things within its jurisdiction" (p. 697).

* * * * *

"But in this case it is not a question of convenience at all within the proper meaning of that term. Aside from the rate at which the ticket may be purchased, the convenience of purchasing this kind of a ticket is so small that the right to enact the law cannot be founded upon it.

"It is no answer to the objection to this legislation to say that the company has vol-

untarily sold thousand-mile tickets good for a year from the time of their sale. Persons may voluntarily contract to do what no legislature would have the right to compel them to do. Nor does it furnish a standard by which to measure the reasonableness of the matter exacted by the legislature. The action of the company upon its own volition, purely as a matter of internal administration, and in regard to the details of its business *which it has the right to change at any moment*, furnishes no argument for the existence of a power in a legislature to pass a statute in relation to the same business imposing additional burdens upon the company" (p. 697). (Italics ours.)

* * * * *

"The authority to legislate in regard to rates comes from the power to prevent extortion or unreasonable charges or exactions by common carriers or others exercising a calling and using their property in a manner in which the public have an interest.

"In this case there is not an exercise of the power to fix maximum rates. * * * It is a pure, bald, and unmixed power of discrimination in favor of a few of the persons having occasion to travel on the road and permitting them to do so at a less expense than others, provided they buy a certain number of tickets at one time (p. 698). It is not legislation for the safety, health or proper convenience of the public, but an arbitrary enactment in favor of the persons spoken of, who, in the legislative judgment should be carried at a less expense than the other members of the community" (p. 699).

The judgment of the State Supreme Court accordingly was reversed and the cause remanded.

MUTATIS MUTANDIS the foregoing stands today as the most apt and all-compelling argument capable of being urged in support of the position of the plaintiff in error in the case at bar.

Though repeatedly cited by this court in subsequent opinions (*Wisconsin, &c., Railroad vs. Jacobson*, 179 U. S., 287, 297; *Erie R. R. Co. vs. Williams*, 233 U. S., 685, 701; *Northern Pacific Ry. vs. North Dakota*, 236 U. S., 585, 596; *Chicago, &c., R. R. Co. vs. Wisconsin*, 238 U. S., 491, 499), the authority of its utterances has been in no respect lessened nor has their scope and all-embracing character been restricted, but on the contrary repetition by way of citation has but strengthened and epitomized their expression, for example in *Wisconsin, &c., R. R. vs. Jacobson*, 179 U. S., 287, it was said (p. 297):

“While this power of regulation exists, it is also to be remembered that the legislature cannot under the guise of regulation interfere with the proper conduct of the business of the railroad corporation in matters which do not fairly belong to the domain of reasonable regulation (*Lake Shore, etc., Railway Company vs. Smith*, 173 U. S., 684).

And in *Northern Pacific Railway vs. North Dakota*, 236 U. S., 585, at page 595, it was said:

“The general principles to be applied are not open to controversy. The railroad

property is private property devoted to a public use. As a corporation, the owner is subject to the obligations of its charter. As the holder of special franchises, it is subject to the conditions upon which they were granted. Aside from specific requirements of this sort, the common carrier must discharge the obligations which inhere in the nature of its business. It must supply facilities that are reasonably adequate; it must carry upon reasonable terms; and it must serve without unjust discrimination. These duties are properly called public duties, and the State within the limits of its jurisdiction may enforce them. The State may prescribe rules to insure fair remuneration and to prevent extortion, to secure substantial equality of treatment in like cases, and to promote safety, good order and convenience.

"But, broad as is the power of regulation, the State does not enjoy the freedom of an owner. The fact that the property is devoted to a public use on certain terms does not justify the requirement that it shall be devoted to other public purposes, or to the same use on other terms, or the imposition of restrictions that are not reasonably concerned with the proper conduct of the business according to the undertaking which the carrier has expressly or impliedly assumed. If it has held itself out as a carrier of passengers only, it cannot be compelled to carry freight. As a carrier for hire, it cannot be required to carry persons or goods gratuitously. The case would not be altered by the assertion that the public interest demanded such carriage. The public interest cannot be invoked as a justification for demands which pass the limits of reasonable protec-

tion and seek to impose upon the carrier and its property burdens that are not incident to its engagement."

The analogy between the Lake Shore and Michigan Southern Ry. case and the case at bar would seem to be complete, for the difference between a 1,000-mileage book or ticket and a 100-trip ticket both required to be issued contrary to the managerial will of the carrier and at rates less than the maxima or standard one-way single fare is not fundamental, and what the legislature itself in the one case could not lawfully do by direct legislation it is certain that in the other case it cannot do indirectly by conferring similar powers upon a commission which exists solely by the legislation sufferance.

It is suggested by counsel for the defendant in error (Brief, p. 24)

"that the plaintiff in error will not be permitted to say that the commutation rates involve no unjust or unlawful discrimination when issued by itself, of its own volition at rates fixed by itself, but that they do involve such discrimination when ordered by the Public Service Commission of Maryland to be issued by it at just and reasonable rates fixed by the Commission."

But this suggestion fails to note the necessary effect of the proviso to Sec. 16 of the Public Service Commission law (*ante.*, p. 10) which expressly

authorizes the issuance of such tickets at the instance of the carrier subject only to the requirement that it shall file with the Commission copies of the tariffs of rates, fares and charges upon which such tickets are to be based. But for the legislative authority thus accorded, the carrier would be unable lawfully to issue such reduced rate tickets because of the discrimination against the many in favor of the favored few involved. That provision is by no means unique, for it appears in identic form in the Act to Regulate Commerce and in substantially the same form in the Railroad Commission acts of Pennsylvania, New York and other States.

The principles of law laid down in the *Lake Shore and Michigan Southern Ry. vs. Smith*, 173 U. S., 684, *supra* have been accepted as "binding" and controlling in

Beardsley vs. New York & C. R. R. Co., 162 New York, 230.

Commonwealth vs. Atlantic Coast Line Ry. Co., 106 Virginia, 61, s. c.; 7 L. R. A. (N. S.), 1086, with full note.

State vs. Bonneval, 128 Louisiana, 902.

State vs. Great Northern Ry. Co., 17 North Dakota, 370.

On similar grounds a statute of Massachusetts requiring railroad companies to issue mileage tickets and to receive those of other roads in payment of fare, without providing any fund for their

redemption, or making them a lien on any tangible property, or putting any limit on the number of them which may be issued, or the time within which they must be used, was held to be unconstitutional, as an appropriation of individual property to public use without the owner's consent, and without legal provision for a reasonable compensation therefor.

Att'y-Gen. *vs.* Old Colony R. Co., 160 Mass., 62.

In Massachusetts *vs.* Interstate Consolidated Street Railway Company, 207 U. S., 79, the judgment of the Massachusetts Supreme Judicial Court (187 Mass., 436), upholding as constitutional a local statute which required a street car company to carry school children at half the regular passenger fare, was affirmed upon the ground that the constitutionality of the statute in question was not truly involved because the railroad company had accepted its charter "subject to all the duties, liabilities, and restrictions set forth in all general laws now or hereafter in force, relating to street railway companies, etc., and therefore whether the law in question was constitutional or not it was bound by it.

The opinion in that case did not refer to the Lake Shore, etc., case, *supra*, nor does its reasoning in the slightest degree detract from the authority claimed for the earlier case.

It is respectfully submitted the action of the Public Service Commission here complained of, and the decrees of the State tribunals upholding it, were each and all without warrant or authority in law and consequently the decree of the Court of Appeals of Maryland should be reversed and the cause remanded to that court for further proceedings.

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(33909)



Supreme Court of the United States, U. S.

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In The

Supreme Court of the United States

OCTOBER TERM, 1918.

No. 31

THE PENNSYLVANIA R. R. COMPANY, LESSEE
OF THE NORTHERN CENTRAL RAILWAY COM-
PANY,

Plaintiff in Error.

vs.

ALBERT G. TOWERS, ET AL., CONSTITUTING THE
PUBLIC SERVICE COMMISSION OF MARY-
LAND,

Defendants in Error.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF
MARYLAND.

BRIEF ON BEHALF OF THE DEFENDANTS IN ERROR.

W. CABELL BRUCE,

General Counsel to the Public Service
Commission of Maryland and At-
torney of the Defendants in Error.

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IN THE
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No. 221.

THE PENNSYLVANIA R. R. COMPANY, LESSEE
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Plaintiff in Error,

vs.

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Defendants in Error.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF
MARYLAND.

**BRIEF ON BEHALF OF THE DEFENDANTS
IN ERROR.**

FIRST ASSIGNMENT OF ERROR.

(Record, p. 159.)

The first assignment of error in this case is based upon the claim that, in undertaking, by its order of December 21, 1914, to prescribe commutation rates for passenger traffic on the lines of the Northern Central Railway within the

State of Maryland, the Public Service Commission of Maryland violated Sec. 10 of Art. 1 of the Federal Constitution, which declares that no State shall pass any law impairing the obligation of contracts, because, by Sec. 8 of Ch. 395 of the Acts of the General Assembly of Maryland of the year 1838, which was a supplement to the charter of the Baltimore and Susquehanna Railroad Company, one of the corporate progenitors of the Northern Central Railway Company, it was provided as follows:

"The president and directors of said company shall have power to charge for the transportation of passengers on their road any sum of money not exceeding six cents per mile, as in their discretion may seem expedient";

and because by the terms of the Consolidation Act (Ch. 250 of the Acts of the General Assembly of Maryland of the year 1854), to which the Northern Central Railway Company owes its existence, it was declared that the company was to possess all the corporate powers and privileges, and to be subject to all the duties and obligations, not inconsistent with the Act and its general intent, which had been expressed in the charter, previously granted to the Baltimore and Susquehanna Railroad Company and its supplements.

The error set up in this assignment is, we submit, putative merely. In the cases of the State of Md. vs. The Northern Central Rwy. Co., 44 Md. 131, it was contended on behalf of the railway company that certain exemptions from taxation granted by the charter of the Baltimore and Susquehanna Railroad Company (Acts of the General Assembly of Maryland of the year 1827, Ch. 72, Sec. 20) devolved, by virtue of the Consolidation Act of 1854, upon the railway company, and could not be repealed by the State of Maryland without violating the prohibition of the Federal Constitution against the impairment of the obligation of contracts. The correctness of this conclusion was denied by the Court

of Appeals of Maryland. The effect of the merger brought about by the Act of 1854, it held, was to create an entirely new corporation in the place of the Baltimore and Susquehanna Railroad Company and the other three companies merged, entitled, it was true, to the tax exemptions, to which the Baltimore and Susquehanna Railroad Company was entitled, but only by way of new and special grants to it, dating from the period when the Act of 1854 went into operation (p. 163). The exemptions were, therefore, the Court further held (p. 164), subject to the provisions of Art. 3 of Sec. 47 of the Maryland Constitution of 1851, then in force, which read as follows:

"Corporations may be formed under general laws, but shall not be created by special Act except for municipal purposes; and in cases where in the judgment of the legislature the object of the corporation cannot be attained under general laws. *All laws and special Acts pursuant to this section may be altered from time to time or repealed.*"

These provisions were repeated almost *totidem verbis* in Sec. 51 of Art. 3 of the Maryland Constitution of 1864, which succeeded the Maryland Constitution of 1851, and are now found in the following terms in Sec. 48 of Art. 3 of the present Maryland Constitution of 1867, which succeeded the Maryland Constitution of 1864:

"Corporations may be formed under general laws, but shall not be created by special Act, except for municipal purposes, and except in cases where no general laws exist providing for the creation of corporations of the same general character as the corporation proposed to be created; and any act of incorporation passed in violation of this section shall be void. *All charters granted or adopted in pursuance of this section and all charters, heretofore granted and created subject to repeal or modi-*

fication, may be altered from time to time or be repealed."

It follows that, if the power of the president and directors of the Baltimore and Susquehanna Railroad Company, conferred upon them by the supplement to its charter, to charge for the transportation of passengers any sum of money in their discretion not exceeding 6% per mile passed to the Northern Central Railway Company by virtue of the Consolidation Act of 1854, this power is now completely subject to the legislative authority of the General Assembly of Maryland, which would seem to have unconditionally abrogated the power by a recent enactment. We refer to Section 31½ of Chapter 180 of the Acts of the General Assembly of Maryland of the year 1910 (now contained in Section 444 of Art. 23 of Bagby's Annotated Code of Maryland), which reads as follows:

"All acts or parts of acts, heretofore passed and now existing, prescribing or limiting the price at which any gas corporation or electrical corporation, or any other corporation subject to this act, may furnish, sell or dispose of its gas or electricity, or other product or utility are hereby repealed; it being the intent of this Act that the powers of the commission herein created to ascertain the price of such gas or electricity or other product or utility, as provided for herein, shall supersede all such acts or parts of acts aforesaid."

This act is commonly known as the Public Service Commission Law of Maryland, was approved on April 5, 1910, and creates a public service commission, with uncommonly extensive powers of regulation over the rates and services of common carriers, gas and electrical, telephone and other public service corporations. It is true that in the case of Gregg vs. Public Service Commission, 121 Md. 1, 30, it was

held by the Court of Appeals of Maryland that, sweeping as was the language just cited, repealing all existing statutory rates, fares and charges of public service corporations, such fares, rates and charges remained in force until the commission "regulated" them. If this conclusion is now intended by the plaintiff in error to be pushed to the point of claiming that the commission does not "regulate" until it fixes a maximum fare, rate or charge in a controversy *inter partes* before it, the proper answer is the one given by the learned judge of the Circuit Court No. 2 of Baltimore City when the same contention was urged upon him before the present case was appealed by the plaintiff in error from that Court to the Court of Appeals of Maryland. In the very act of passing its orders in the present case, the commission did "regulate," or, to speak more clearly, did abolish the power to fix rates at not more than six cents per mile, which passed to the Northern Central Railway Company under the terms of the Consolidation Act of 1854. The fact should not be overlooked, however, that, if the general view, taken by the Court of Appeals of Maryland of the powers of the Public Service Commission of Maryland, is correct, it is immaterial to ask whether the authority of the plaintiff in error to issue commutation tickets in this case is referable to its special powers to fix rates derived from the charter of the Baltimore and Susquehanna Railroad Company, or to its general powers as a railroad company. In either instance, having chosen to exercise the power, it can exercise it only subject to the jurisdiction of the commission over public service rates.

"The question," the Court of Appeals of Maryland said in its opinion in the present case below, "is not now presented whether it is within the power of the Public Service Commission to require the establishment of a schedule of commutation rates by a railway company in a case where no such rates had theretofore existed. Upon that no opinion is now expressed. What the Court is now called to pass

upon is the reasonableness of commutation rates, where such a system of rates had long been in operation by the action of the company, and where a modification of these rates was proposed by the railway company and by it submitted to the commission. Whether commutation rates shall be established at all is a question of policy upon the part of the company; but, if such a policy is adopted, there will still remain the reasonableness of the manner in which that policy is carried out." (Rec. p. 144.)

SECOND ASSIGNMENT OF ERROR.

(Record, p. 159.)

This assignment of error is based upon the claim that, in affirming the validity of so much of Section 23 of the Public Service Commission Law of Maryland (now contained in Sec. 435 of Art. 23 of Bagby's Annotated Code of Maryland), and so much of Sec. 23-A, added to the Public Service Commission Law of Maryland by Chapter 162 of the Acts of the General Assembly of Maryland of the year 1912 (and now contained in Sec. 435-A of Art. 23 of Bagby's Annotated Code of Maryland, Vol. 3) as requires, or may be held to require, common carriers within the State of Maryland to issue mileage, excursion, school commutation and commutation passenger tickets at such rates as the Commission may deem reasonable and proper, the decree of the Court of Appeals of Maryland in the present case not only violated the contract rights of the plaintiff in error, within the meaning of the first assignment of error, but also deprived the plaintiff in error of its property, and denied to it the equal protection of the laws, within the meaning of Sec. 1 of the Fourteenth Amendment to the Federal Constitution. To the extent that this assignment sets up an irrepealable contract right, we need not discuss it, since we have already met that objection, but, to the extent that it relies upon

the shelter of the Fourteenth Amendment to the Federal Constitution, it calls, of course, for a somewhat searching examination.

Section 23 of the Public Service Commission Law provides as follows:

“Whenever the Commission shall be of the opinion, after a hearing, upon its own motion or upon a complaint made as provided in this act, that the rates, tolls, fares or charges demanded, exacted, charged or collected by any common carrier, railroad or street railroad, railroad corporation, street railroad corporation, or other corporation subject to the provisions of this act, for the transportation of persons, freight or property within the State, or that the regulations or practices of such common carrier or corporation affecting such rates, tolls or services are unjust, unreasonable, unjustly discriminating or unduly preferential, or in any wise in violation of any provision of law, the Commission shall determine the just and reasonable rates, tolls, fares and charges to be thereafter observed and in force as the maximum to be charged for the service to be performed and shall fix the same by order to be served upon all common carriers or other corporations by whom such rates, fares and charges are thereafter to be observed.”

And Section 23-A of the Public Service Commission Law provides as follows:

“Whenever the Commission shall be of the opinion after a hearing upon its own motion or upon a complaint made as provided in this Act, that the issuance by common carriers in this State, of mileage excursion, school commutation or commutation passenger tickets or joint interchangeable mileage tickets, would be a desirable, advantageous and reasonable thing for the people concerned to demand, it shall be the duty of the

Commission to order the common carrier or common carriers to establish such rates and issue such tickets as the said commission may deem reasonable and proper; such tickets to be good on any or all branches, lines or sections of the carrier's route in this State, or only on certain specific branches, lines or sections as the Commission may order and direct."

Duly condensed, the argument of the plaintiff in error is that the Public Service Commission of Maryland can, because of Section 1 of the Fourteenth Amendment to the Federal Constitution, be given no constitutional power by such legislative provisions as these to impose railroad rates of any sort lower than the single one-way railroad rate (which, it is admitted by the plaintiff in error, is entirely subject to the control of the Legislature) upon a railroad corporation against its will. The reasoning is that such a power upon the part of the Commission would eat too deeply into the core of corporate discretion, and would operate a taking of the property of the corporation without due process of law and a denial to it of the equal protection of the laws.

To say nothing more, the objection is a tardy one. For many years, both before and since the creation of the Public Service Commission of Maryland, mileage rates have been in force in the State of Maryland partly with, and partly without, the acquiescence of the railroad companies themselves. By Chapter 174 of the Acts of the General Assembly of Maryland of the year 1906 (now contained in Sections 326 to 330, inclusive, of Article 23 of Bagby's Annotated Code of Maryland) it is provided as follows:

"SECTION 1. Be it enacted by the General Assembly of Maryland, That every railroad corporation owning, controlling or operating a railroad in this State, which charges a fare of more than two cents per mile for a

first class straight passenger ticket, shall keep for sale mileage books of two classes, the first having five hundred, and the other one thousand coupons, each coupon for one mile, attached thereto, entitling the holder thereof to travel on the railroad line or lines, owned, controlled or operated by such railroad until all of said coupons are used up, for which such railroad corporation shall charge a sum not to exceed two cents per mile.

SEC. 2. *And be it further enacted*, That such railroad corporations shall not charge or receive for a mileage book containing five hundred such coupons more than the sum of ten dollars, and for a mileage book containing one thousand such coupons not more than the sum of twenty dollars; and such mileage books shall be kept for sale by such railroad corporations at every ticket office of such corporations authorized to do business for them, and such mileage book or books shall be delivered to the applicant immediately upon application therefor, and the payment of the price legally demandable therefor.

SEC. 3. *And be it further enacted*, That the purchaser of said mileage book, or any member of the family of said purchaser or purchasers, if a firm, his or their employees, shall be entitled to travel, on the presentation of said mileage book, on the passenger trains of the railroad owned, controlled or operated by such corporation issuing said book and all the lines thereof, for the number of miles equal to the coupons detached by the conductor of such railroad, and such conductor shall not detach from such mileage book more coupons than the number of miles traveled, and such mileage book shall entitle the purchaser thereof and the parties entitled to use the same to the same rights and privileges in respect to the transportation of themselves and baggage or property to which the holders of the highest class ticket issued by such corporation is entitled.

SEC. 4. *And be it further enacted*, That there shall be no stipulation, agreement or condition required by said railroad corporation before it shall issue such mileage books, that said mileage books shall become forfeited or null and void by the accidental loss of the same, and said loss shall not render the same forfeited or null and void; and there shall be no limitation of time in which such mileage books shall be good, but the same shall be good until all coupons attached thereto have been used.

SEC. 5. *And be it further enacted*, That in the event any railroad corporation owning, controlling or operating a line or lines in this State shall refuse or neglect to issue a mileage book as prescribed in this law, upon demand for the same and a tender of the price therefor authorized to be charged in this Act, or in violation of any of its provisions, shall refuse through any of its conductors or agents to accept the coupons of such mileage book for transportation according to the terms of this Act, then the person to whom such refusal is made shall be entitled to recover as liquidated damages from said railroad corporation the sum of fifty dollars for each refusal or neglect to issue said book or to accept said coupons, which damages shall be recoverable before any justice of the peace of any county in the State of Maryland or in Baltimore City, in which said railroad corporation has an office or place of business. The same right of appeal from the decision of the justice of the peace is hereby reserved to either party, as in other civil cases before a justice of the peace; provided, this Act shall not apply to any railroad chartered under the laws of this State whose gross passenger receipts shall not exceed five thousand dollars annually."

And by a later enactment of the General Assembly of Maryland (Ch. 667 of the Acts of the year 1914, now contained in Secs. 330-A and 330B of Art. 23 of Bagby's Annotated Code of Maryland), it is provided as follows:

"SECTION 1. Be it enacted by the General Assembly of Maryland, That every railroad corporation owning, controlling or operating a railroad in this State shall keep for sale mileage books, good for one thousand or less miles of travel, and all such mileage books shall entitle the holder or bearer thereof, or any person or persons accompanying said holder or bearer, to travel on the presentation of said mileage book on the passenger trains of the railroad owned, controlled or operated by such corporation issuing said book and all the lines thereof for the number of miles equal to the coupons detached or cancelled by the conductor of such railroad, and such conductor shall not detach or cancel from such mileage book more miles than the number of miles traveled, and such mileage book shall entitle the holder or bearer thereof and the parties entitled to use the same to the same rights and privileges in respect to the transportation of themselves and baggage or property to which the holders of the highest class ticket issued by such corporation is entitled.

SEC. 2. And be it further enacted, That in the event of any railroad corporation owning, controlling or operating a line or lines in this State shall refuse or neglect to issue a mileage book granting all the privileges prescribed in this law upon the demand for the same and a tender therefor of the prevailing price charged by said railroad corporation for any other class of mileage books at time of such demand, or in violation of any of the provisions of this Act shall refuse through any of its conductors or agents to accept the coupons of such mileage book for transportation according to the terms

of this Act, then the person to whom such refusal is made shall be entitled to recover as liquidated damages from said railroad corporation the sum of fifty dollars for each refusal or neglect to issue said book or accept said coupons, which damages shall be recoverable before any justice of the peace of any County in the State of Maryland or in Baltimore City in which said railroad has an office or place of business."

So far as we are aware, no constitutional objection has ever been urged by any railroad company in Maryland to either of these two acts, since they have been upon the statute book.

In the next place, the qualification by which the objection of the plaintiff in error is restricted, is noticeable. It admits that the Legislature has the power to say what a railroad company shall charge for a single one-way fare, subject only to the principle that the exercise of its discretion must not work confiscation. It is merely to the power of the Public Service Commission of Maryland to require the issuance of other tickets than single one-way tickets that it demurs. The Legislature, it contends, is authorized to fix a maximum single one-way rate, but, when it has once fixed such a rate, it cannot, against the will of the corporation, pare this rate down for the benefit of any particular class of its patrons.

The conclusion is not supported by any substantial train of reasoning. It is true that the Legislature cannot, at its mere pleasure, make fish of one group of citizens and fowl of another. In other words, it cannot split up the citizenship of the community into arbitrary and unreasonable classes, and confer a benefit upon one class, and withhold the same benefit from another, in disregard of the measure of equal rights prescribed by the State and Federal Constitutions. That this cannot be done has been frequently

decided by this and other courts, and the doctrine and its limitation will be found clearly stated in the following cases:

Barbier vs. Connolly, 113 U. S. 27, 32;
Soonhing vs. Crowley, 113 U. S. 703, 708;
Powell vs. Pennsylvania, 127 U. S. 678, 687;
Dent vs. West Virginia, 129 U. S. 114, 124;
State vs. Broadbelt, 89 Md. 565, 579;
Scholle vs. State, 90 Md. 729, 739;
Watson vs. State, 105 Md. 650, 655;
State vs. Potomac Coal Co., 116 Md. 380, 396;
State vs. Loden, 117 Md. 373, 379.

From these cases it will be seen that the limitation upon the doctrine is that there is no objection to classification when it is not arbitrary and unreasonable, and rests upon essential differences, which really separate the situation of one class from that of another, and admits, without any violation of the constitutional guaranty of equality, of the application to the one class of a different rule of action from that applied to the other. The form in which it was expressed by the late Judge Cooley in his *Principles of Constitutional Law* (3rd Ed. p. 249) was adopted by the Court of Appeals of Maryland in *State vs. Broadbelt*, *supra*, p. 579:

“The guaranty of equal protection is not to be understood, however, as requiring that every person in the land shall possess the same rights and privileges as every other person. The amendment (the Fourteenth to the Federal Constitution) contemplates classes of persons, and the protection given by the law is to be deemed equal if all persons in the same class are treated alike under like circumstances and conditions both as to privileges conferred and liabilities imposed. The classification must be based on reasonable grounds; it cannot be a mere arbitrary selection.”

Applying this test to the commutation tickets involved in the present case, it is manifest that they severally rest upon entirely natural, reasonable and just principles of classifications. Each one of them represents a separate and distinct class of persons sharply distinguished from all the other patrons of the Northern Central Railway by salient circumstances peculiar to themeslves as a class; each one gratifies a special combination of transportation wants and requirements; the user of each kind of ticket, to employ a current phrase, is in a class by himself, and the service evidenced by each is a substantially different service from the services evidenced by the rest. The single one-way ticket is suited to the requirements of the passenger whose need for transportation is more or less casual and occasional, and who does not expect to return as he goes; the round-trip ticket to those of the passenger of the same general type, who, however, *does* expect to return as he goes; the excursion ticket to those of the passenger who is willing to be transported for some infrequent and special purpose, usually recreative, which makes the same appeal to many other persons besides himself, but who is not willing to be transported at all except at a lower rate than that of the single one-way ticket. These three kinds of tickets do not originate in the peculiar conditions of suburban life. The other tickets involved in the present case, however, do. The ten (or more) strip ticket is suited to the requirements of suburban householders whose engagements with their servants include the obligation to furnish them with transportation to and from Baltimore once or twice a week, or who find such tickets convenient to members of their families who are in the habit of making a trip or so a week to Baltimore City; the 100-trip ticket to those of passengers who pass frequently to and fro between Baltimore City and their suburban homes, but not every day, and for this reason, or from calculations based on sickness, absence or the like do not feel justified in taking the

risk of a ticket whose economic advantage depends upon its use every or almost every day; the 60-trip ticket to those of the passenger committed by his circumstances to the daily use of the railway and willing to take the risk avoided by the holder of the 100 trip ticket; the 180 trip ticket to those of the passenger whose circumstances are such as to make him feel that he can for a still lower rate take these risks for a still longer period; and the 46-trip school ticket to those of parents residing in the suburbs of Baltimore City for a part or the whole of the year who send their children into the city to school five days in the week. No logical reason, we submit, can be given why the Public Service Commission of Maryland should be denied the power to fix a maximum rate for each and every one of the different kinds of commutation tickets or quasi-commutation tickets mentioned in the Record in the present case. If it has the right to fix the maximum rate for the single one-way ticket, it has the right to fix the maximum rate for the return ticket, the monthly ticket, the school ticket, etc., because they all spring from essentially dissimilar conditions and needs, and are issued for essentially dissimilar services, and are, therefore, so far as amenability to regulation by the Public Service Commission of Maryland is concerned, all in the same category. If this is so, the Public Service Commission of Maryland no more usurps the corporate discretion of the plaintiff in error when it fixes a maximum rate for the monthly or school ticket than when it fixes a maximum rate for the single one-way ticket. The same thing is true when, apart from the rate simply it annexes terms and conditions of one sort or another to commutation tickets as well as to single one-way tickets. Nor, for the same reasons suggested by just principles of classification, is there any more unlawful discrimination in a requirement by the Commission that a monthly ticket, for instance, shall be issued at a certain maximum rate than in a requirement by the Com-

mission that a single one-way ticket shall be issued at a certain maximum rate.

These conclusions of ours are supported by the decision of this Court in the case of the Interstate Commerce Commission vs. B. & O. R. R. Co., 145 U. S. 263. There the Pittsburg, Cincinnati & St. Louis Ry. Co. filed a petition with the Interstate Commerce Commission against the Baltimore & Ohio R. R. Co. to compel the latter to withdraw from its lines, upon which competition with the business of the petitioner was transacted, "party rates," and to decline to give such rates in the future upon such lines. Party rate tickets were issued principally to theatrical and operatic companies for the transportation of their troupes, and it was contended by the Pittsburg, Cincinnati & St. Louis Ry. Co. that the issuance of such tickets at a reduced rate involved an unjust discrimination as between different classes of the traveling public. To this view this Court refused to accede, and, in rendering its opinion, used language directly applicable to the services mentioned in the present case. It was not all discriminations or preferences, it said, that fell within the inhibition of the Act to Regulate Commerce; only such as were unjust or unreasonable. For instance, it would be obviously unjust to charge A. a greater sum than B. for a single trip from Washington to Pittsburgh, but if A. agreed not only to go but to return by the same route it was not unjust to B. to permit him to do so for a reduced fare, since the services were not alike nor the circumstances and conditions substantially similar, as required by the Act to Regulate Commerce to make it an unjust discrimination (p. 276). In a later part of the same opinion the Court also used the following language:

"In order to constitute an unjust discrimination under Sec. 2 the carrier must charge or receive directly from one person a greater or less compensation than from another, or must accomplish the same thing indi-

rectly by means of a special rate, rebate or other device; but in either case it must be for a 'like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions.' To bring the present case within the words of this section, we must assume that the transportation of ten persons on a single ticket is substantially identical with the transportation of one, and in view of the universally accepted fact that a man can buy, contract or manufacture on a large scale cheaper proportionately than upon a small scale, this is impossible. In this connection we quote with approval from the opinion of Judge Jackson in the Court below: 'To come within the inhibition of said sections the differences must be made under like conditions; that is, there must be contemporaneous service in the transportation of like kinds of traffic under substantially the same circumstances and conditions. In respect to passenger traffic the positions of the respective persons or classes between whom differences in charges are made must be compared with each other, and there must be found to exist substantial identity of situation and of service accompanied by irregularity and partiality resulting in undue advantage to one or undue disadvantage to the other in order to constitute unjust discrimination,'" (p. 281.)

After remarking elsewhere in its opinion that for a railroad to make for the public generally a certain rate of fare and to a particular individual in the same condition a reduced rate for the same class of goods, or for a railroad to even allow the same reduced rate to everyone doing the same amount of business tended to unjust discrimination, the Court added:

"The same result, however, does not follow from the sale of a ticket to a number of passengers at a less rate

than for a single passenger; it does not operate to the prejudice of the single passenger who cannot be said to be injured by the fact that another is able in a particular instance to travel at a less rate than he" (p. 280).

In its opinion, the Court said that at the time of the passage of the Act to Regulate Commerce, the railroads had been accustomed to issue tickets at reduced rates to passengers making frequent trips, to passengers making trips for long distances and to passengers making trips in parties of 10 or more lower than the regular single fare towards the same points. For example, 1,000-mile tickets, to meet the needs of commercial travelers, and several forms of tickets, to meet the needs of suburban residents or frequent travelers, such, for example, as monthly or quarterly tickets, good for any number of trips within the specified time, 10, 25, or 50 trip tickets, good for a specified number of trips by one person or for one trip by a specified number of persons, and (to accommodate parties of 10 or more), a single ticket one way or round trip for the whole party, and (to accommodate excursionists traveling in parties too large to use a single ticket) special individual tickets issued to each person, and tickets good for a specified number of trips between cities where travel was frequent. Congress, the Court said, might be presumed to have had these practices in view and not to have designed to interfere with them except so far as they were unreasonable in themselves or unjust to others (p. 280). The Court then proceeded to give its reasons, as we have seen, why the party rate ticket, one of those classes of tickets, did not operate an undue or unreasonable preference and advantage to a particular description of traffic or an unjust discrimination against other people, and its language is in every respect as applicable to other commutation or quasi-commutation tickets as to party rate tickets themselves.

The decision of the present case can, we think, be safely rested upon the opinion of the Court in the case just cited.

The application of the opinion in that case to the present case, we submit, is too close for a single fold of the present case to escape it, and we might add that as late as the case of Willcox vs. Consolidated Gas Co., 212 U. S. 19, this Court recognized the principle that a wholesale rate for gas lower than the general rate may be fixed for gas supplied in large quantities to a city.

Nor should sight be lost of the fact that, if the power of the Public Service Commission to regulate fares on the Northern Central Railway was restricted to single one-way fares, it would be gravely curtailed. Out of the total of 695,099 tickets of all sorts, including single one-way tickets, sold to passengers over the Northern Central Railway from November, 1913, to October, 1914, inclusive, only 67,507 were single one-way tickets. The rest were all 46-trip, 50-trip, 60-trip, 100-trip, 180-trip, excursion and strip tickets. (See Plaintiff's Exhibit No. 2 annexed to p. 142 of the Record.) In other words, according to the contention of the plaintiff in error, less than 10% of all the fares of the Northern Central Railway Co. within the State of Maryland are subject to regulation by the Public Service Commission of Maryland—a lame and impotent conclusion, indeed, if the people of Maryland really had any serious purpose in creating an expensive Commission for the purpose largely of regulating the fares, rates and charges of public service corporations!

The attempt of the plaintiff in error below to meet these considerations and to break the force of the Party Rate Ticket Case was limited practically to the citation of the case of The Lake Shore and Michigan Southern Ry. Co. vs. Smith, 173 U. S. 684. The decision in this case was rendered as long ago as 1899—before the original Act to Regulate Commerce had become a living, smoothly-working reality; six years before the enactment of the Hepburn Act, which authorized the Interstate Commerce Commission for

the first time to fix rates, and six years before the establishment of the New York Public Service Commissions, the first public service commissions created in the United States. In 1899 state regulation of public service corporations in the sense that we now understand it can hardly be said to have begun. Today there are public service commissions in some 24 States of the Union. In that year there was not one in the country, and the judicial as well as the popular mind had to be brought step by step, as is true of all profound governmental and social changes, to the expansive, and still expanding, system of regulation which now occupies the field of public service commission authority. It is important, too, to remember that Chief Justice Fuller and Justices Gray and McKenna all dissented from the majority opinion in the Lake Shore case. The Lake Shore case, it is claimed by the plaintiff in error, denies the power of the Legislature and therefore necessarily of a Commission created by the Legislature to compel a railroad company to issue any kind of ticket at a lower rate than that fixed as a maximum for a single one-way ticket. It is inconceivable, it seems to us, that any such scope should have been intended by this Court to be given to its decision in that case. If so, the case should be set down merely as one of those temporary reactions which sometimes occur in the judicial, as well as the legislative, development of the law. This Court had already decided in the Party Rate Ticket Case, *supra*, as we have seen, that party rate tickets do not involve any unjust and unreasonable discrimination, and in doing so, had employed language broad enough to include many of the kinds of commutation tickets involved in the present case, and, even if it had not, the sanction given by it to such tickets would necessarily have followed as a logical sequel from the sanction given by it to party rate tickets. At any rate, it certainly cannot be asserted that in its opinion in the Lake Shore Case, *supra*, this Court used any express language indicating an intent

to recede from its opinion in the Party Rate Ticket Case. In the former case there is no reference to the latter case at all. It is not likely, to say the least, that, if this Court really proposed in the former case to recall its decision in the latter, it would have done so silently and without a word of explanation or distinction. On the contrary, positive evidence is not wanting that the Court in rendering its decision in the Lake Shore Case was unconscious that the decision conflicted with any of its former decisions, if such conflict there was.

"The power," it said (p. 693), "to compel the company to carry persons under the circumstances as provided for in this Act (an act of the Michigan Legislature) for less than the usual rates does not seem to be based upon any reason which has hitherto been regarded as sufficient to authorize an interference with the corporation, although a common carrier and a railroad."

The kind of reduced-rate ticket that this Court said in the Lake Shore Case could not be issued without unjust and unreasonable discrimination, was, we submit, the thousand mile ticket merely. Its object could not have been to override the well settled principle that there may be a just and reasonable classification that does not conflict with the constitutional guaranty of equal rights. *The intent of the Court was only to declare that a passenger, who buys a ticket to go one mile, and a passenger who buys a ticket to go a thousand miles, are not members of different classes.* As well, the Court said (p. 694), might a railroad company charge a person less for carrying freight, where he sends a certain amount of freight, or the Legislature direct a railroad company to charge smaller rates for clergymen or doctors, for lawyers or farmers, for school teachers, for excursionists, for charity conventions, political conventions, or for all or any of the various bodies that might desire to ride at any par-

ticular time or at any particular point. In other words, while the language of the Court in the Lake Shore Case is unquestionably broad, *its opinion was not directed to a class or classes of reduced-rate railroad patrons distinguished from single one-way ticket patrons by something besides mere intent to travel a longer distance than the ordinary railroad patron usually travels. At the most the decision comes to the statement that there can be no such thing as a reduced rate for a railway traveler merely because he buys a ticket for an unusually long distance.* This was all, we submit, that this Court needed to have decided in the case, and, if its decision was more extensive, what it said beyond the real point with which it was dealing should not be taken as overriding its conclusions in the Party Rate Ticket Case.

The Lake Shore decision is founded partly on the idea that an attempt by the Legislature to require the issuance of a thousand mile ticket is an unconstitutional invasion of the corporate discretion; and partly on the idea that such a ticket involved an unjust and unreasonable discrimination. So far as the latter objection is concerned, it would seem clear that, if the General Assembly of Maryland cannot require a railway corporation in Maryland to allow a reduced rate of any sort, neither can it permit a railway corporation to allow such a rate of its own volition. The power if exercised, whether mandatory or permissive merely, would be equally obnoxious to the Fourteenth Amendment to the Federal Constitution, which prohibits any state from denying to any person within its jurisdiction the equal protection of the laws, and yet the Public Service Commission Law of Maryland not only by Sec. 23-A seeks to empower the Public Service Commission of Maryland to order the issuance of commutation tickets by common carriers, but by Sec. 16 (now contained in Sec. 428 of Art. 23 of Bagby's Annotated Code of Md.), endeavors to give its approval to the issuance of

such tickets by common carriers of their own free will. The part of Sec. 16 to which we refer reads as follows:

"Provided, further, that nothing in this Act shall prevent the issuance of mileage, excursion, school commutation or commutation passenger tickets, or half fare tickets for the transportation of children under twelve years of age, or joint interchangeable mileage tickets, with special privilege as to the amount of free baggage that may be carried under mileage tickets of one hundred miles or more. But before any common carrier subject to the provisions of this Act shall issue any such mileage, excursion, school commutation, commutation passenger tickets, half-fare tickets or joint interchangeable mileage ticket, with special privilege as aforesaid, it shall file with the Commission copies of the tariffs of rates, fares or charges on which such tickets are to be based, together with the specifications of the amount of free baggage permitted to be carried under such joint interchangeable mileage ticket in the same manner as common carriers are required to do in regard to other rates by this Act."

And if a commutation ticket involves an unjust and unreasonable discrimination, what right has the plaintiff in error to issue such a ticket at all now that the Public Service Commission Law of Maryland (Sec. 16) also contains the following provisions:

"No common carrier shall directly or indirectly by any special rate, rebate, drawback or other device or method charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered in the transportation of passengers, freight or property except as authorized in this Act, than it charges, demands, collects or receives from any other person or corporation

for doing a like and contemporaneous service in the transportation of a like kind of traffic under the same or substantially similar circumstances and conditions. No common carrier shall make or give any undue or unreasonable preference or advantage to any person or corporation, or to any locality, or to any particular description of traffic in any respect whatsoever, or subject any particular person or corporation or locality or any particular description of traffic to any prejudice or disadvantage in any respect whatsoever."

The plaintiff in error will not be permitted to say that commutation tickets involve no unjust or unlawful discrimination when issued by itself, of its own volition, at rates fixed by itself, but that they do involve such discrimination when ordered by the Public Service Commission of Maryland to be issued by it at just and reasonable rates fixed by the Commission. So far as the principle of unjust and unlawful discrimination is concerned, it is plain that the plaintiff in error, in relying upon the Lake Shore Case, is engaged in the ticklish process known to our American sense of humor as that of sawing off the limb under one's own seat.

With respect to particular rates, it is recognized that *there is a wide field of legislative discretion, permitting variety and classification*, and hence the mere details of what appears to be a reasonable scheme of rates, or a tariff or schedule affording substantial compensation, are not subject to judicial review.

Nor. Pac. Rwy. Co. vs. State of North Dakota,
236 U. S. 585, 604 (Decided in 1915).

Referring to this case in Norf. & West. Ry. vs. West Va., 236 U. S. 605, this Court said (p. 608): "It was recognized that the State has a broad field for the exercise of its discretion in prescribing reasonable rates for common carriers

within its jurisdiction; that it is not necessary that there should be uniform rates or the same percentage of profit on every sort of business; *and that there is abundant room for reasonable classification and the adaptation of rates to various groups of services*" (decided in 1915). Both of the cases last cited were decided after *the Lake Shore Case*.

THIRD ASSIGNMENT OF ERROR.

The point of this assignment of error has already been covered by our observations upon the second assignment of error.

FOURTH ASSIGNMENT OF ERROR.

The point of this assignment is that the plaintiff in error has recently filed interstate passenger schedules with the Interstate Commerce Commission fixing higher rates than those fixed in the present case for intrastate passenger traffic by the Public Service Commission of Maryland, and that, therefore, the enforcement of the order of the Public Service Commission of Maryland would constitute a discrimination against interstate passenger traffic in favor of intrastate passenger traffic.

With due respect to our brothers, the point is misconceived. It is quite true that in the Shreveport Case (Houston & East and West Texas Ry. Co. vs. United States, 234 U. S. 342, 351), the Supreme Court held that where the interstate and intrastate transactions of the carrier are so related that the government of the one involves the control of the other, it is the Interstate Commerce Commission and not the state agency that is entitled to prescribe the final and determining rule. But the final and determining rule is not prescribed when a railroad company simply files interstate passenger schedules with the Interstate Commerce Commission. When

filed, the company cannot deviate from such schedules without giving the notice to the public required by law, but just as the sole power of initiating rates is vested in the first instance in the company, so too, upon giving this notice it can change its existing rates at pleasure; subject, of course, to the power of the Interstate Commerce Commission at any time on its own complaint or the complaint of the citizen, to fix after hearing a maximum rate. Until controversy and hearing, the filing of the schedules by the railroad company prescribes no final and determining rule, and may at any time be set aside by its own action unless arrested by an order of the Commission in a formal proceeding *inter partes*. Both the Interstate Commerce Commission and the Public Service Commission of Maryland are always sedulous, when tariff schedules are filed with them, to abstain from anything indicative of approval of them. Neither Commission approves such schedules because at any moment it may be impelled of its own accord, or upon the complaint of the citizen, to inquire into their reasonableness. The consequence of all this is, it is hardly necessary to say, that an interstate rate, unless an *adjudicated* rate, is powerless to override or supplant an intrastate rate. Before a Northern Central Railway Company interstate passenger rate can be held void, the Interstate Commerce Commission, pursuant to the powers conferred upon it by Congress, must have fixed, after a hearing *inter partes*, a maximum and conflicting interstate rate. That was the situation in the Shreveport Case, *supra*. There Shreveport, in the State of Louisiana was a competitor with Houston and Dallas in the state of Texas for the trade of the intervening territory, and the intrastate rates on the railway lines from Dallas and Houston eastward to intermediate points in Texas were much less, according to distance, than from Shreveport westward to the same points; and the difference was substantial from the point of view of the shipper and injuriously affected the commerce of Shreveport. The

Interstate Commerce Commission found that the carriers maintained higher rates from Shreveport to points in Texas than were in force from cities in Texas to the same points under substantially similar conditions and circumstances, and that, therefore, an unlawful and undue preference and advantage was given to Texas cities, and a discrimination, that was undue and unlawful, effected against Shreveport; and, in order to correct this discrimination, the carriers were directed to desist from charging higher rates for the transportation of any commodity from Shreveport to Houston and Dallas and intermediate points than were contemporaneously charged for the carriage of such commodity from Houston and Dallas towards Shreveport for equal distances. The order of the Commission was assailed by the carriers in the Commerce Court, but was sustained by it; and the action of the Commerce Court was affirmed by this Court. Here it is manifest the conflict was between an overlapping interstate rate fixed by the Interstate Commerce Commission after controversy and hearing and an intrastate rate. Our brothers lose sight of the distinction between agencies that impose a direct burden upon interstate commerce and agencies that impose only an indirect burden upon it, such as interstate railroad rates. As to what imposes a direct burden upon interstate commerce, the commerce clause in the Federal Constitution is, as we all know, self executing, and does not need Congressional action, or the action of any administrative commission, to give it efficacy. Whatever conflicts with it crumbles at its very touch; but the opposite, as we all know likewise, is true of what imposes only an indirect burden upon interstate commerce. It stands until set aside by Congressional action or by the action of some administrative commission to which Congress has delegated within proper limits its power of regulation. Under the latter circumstances, until Congress does act, the states may act. The

authority of the state to prescribe or establish reasonable charges for intrastate transportation is statewide unless it be limited by the exercise of the constitutional power of Congress with respect to interstate commerce. If the authority of the state be restricted it must be by virtue of the actual exercise of federal control and not by reason merely of a dormant federal power; that is one which has not been exercised. This is all most clearly set forth in the Minnesota Rate Cases, 230 U. S. 352, followed in this respect by the Shreveport Case, *supra*, p. 351.

The whole subject, too, is fully and instructively discussed in the case of Lake Shore & Michigan Southern Ry. vs. Ohio, 173 U. S. 285, and the cases there cited.

FIFTH ASSIGNMENT OF ERROR.

This assignment is too general to require attention.

SIXTH ASSIGNMENT OF ERROR.

This assignment, also, is too general to require attention.

SEVENTH ASSIGNMENT OF ERROR.

So far as this assignment brings forward the claim of unlawful discrimination, it has already been discussed by us in connection with the second assignment of error. So far as it claims that the effect of the decree of the Court of Appeals of Maryland in affirming the decree of the Circuit Court No. 2 of Baltimore City was to require the plaintiff in error to continue to run the passenger business of its Northern Central Railway lines between Baltimore, Maryland, and Harrisburg, Pennsylvania, known as the Baltimore Division, including the intrastate part of these lines between Baltimore and Parkton, Maryland, at a loss, it is

enough for us to refer to the conclusion reached by the Court of Appeals of Maryland in that connection after considering the evidence in the present case. "When we turn," said the Court, "to the testimony offered before the Public Service Commission to determine the reasonableness or unreasonableness of the rates as fixed by the order of the Commission, we encounter serious difficulties. It is conceded that the increase in the straight fare ticket will produce an increase of revenue to the railway, but of what amount or how far it may operate to diminish the present passenger operating ratio, there is no means of determining. As the accounts of the railway company have been kept, there has been an attempt to apportion the receipts and expenditures as between freight and passenger business, both over the entire Northern Central system and also over the Baltimore division, but that is as far apparently as the effort at apportionment has gone. In this, 65% of the expenditures has been apparently readily apportioned as between the freight and passenger business, while the remaining 35% has been allocated arbitrarily. In this is included much in the way of expense which pertains to both of these classes of business, such as maintenance of way, bridges and the like, but, taking the apportionment as made to have been measurably fair, there is this further difficulty remaining. No attempt has been made to subdivide the receipts of the passenger business of the Baltimore division, as between the portion which lies within the State of Maryland, and the territory between Parkton and Harrisburg, still less to furnish anything like exact figures of the relative receipts and expenses arising from commutation business. Numerous and elaborate tabulations were offered on behalf of the company tending to show that the passenger business of the Baltimore division had been operated at an actual loss for a number of years. Without going into

these in detail, the subjoined extract from Plaintiff's Exhibit No. 5 will show the claim of the railway in this regard:

	<i>Passenger</i>		<i>Ratio of expenses to revenues.</i>
	<i>Revenues.</i>	<i>Expenses (inc. taxes).</i>	
1908.....	\$ 931,858	\$ 985,001	105.70
1909.....	1,012,340	1,045,904	103.32
1910.....	1,089,574	1,319,213	121.08
1911.....	1,096,251	1,363,141	124.35
1912.....	1,160,982	1,244,285	107.18
1913.....	1,265,595	1,387,306	109.62

But in this connection it must be borne in mind that the figures in the expense column and in the column of ratio of expenses to revenue might be materially modified by a slightly different apportionment of the 35% which as already stated was necessarily arbitrarily allocated, and might be still further modified if we had absolute figures in regard to that portion of the passenger business of the Baltimore division conducted over the part of that division lying between Baltimore and Parkton." (Rec. p. 151.)

With the evidence produced by the plaintiff in error before the Public Service Commission of Maryland in such a state of uncertainty as this, it is difficult to see how the Commission could have arrived at any other conclusion than it did, and having arrived at this conclusion it is still more difficult to see how its action can be set aside without extreme violence to perfectly well-settled principles which this Court and other judicial tribunals have prescribed for their own guidance in dealing with appeals from the orders of the Interstate Commerce Commission and public service commissions. Section 46 of the Public Service Commission Law of

Maryland (now contained in Sec. 460 of Art. 23 of Bagby's Annotated Code of Maryland) provides as follows:

"In all trials, actions and proceedings arising under the provisions of this Act, or growing out of the exercise of the authority and powers granted herein to the Commission, the burden of proof shall be upon the party adverse to such Commission, or seeking to set aside any determination, requirement, direction or order of said Commission, to show by clear and satisfactory evidence that the determination, requirement, direction or order of the Commission complained of is unreasonable or unlawful, as the case may be."

In other words, *prima facie* effect is given by the statute to the conclusion of the Public Service Commission of Maryland. The same effect is given by the Act to Regulate Commerce to the findings of the Interstate Commerce Commission. Cincinnati, etc., Ry. Co. vs. Interstate Commerce Commission, 206 U. S. 142, 154. And what is meant by *prima facie* effect has been made clear by this Court in I. C. C. vs. Union Pac. R. R., 222 U. S. 541, and I. C. C. vs. Louisville & Nashville R. R., 227 U. S. 88. In the former case, in deciding whether the Interstate Commerce Commission exceeded its powers in fixing a 45c. rate on lumber over a longer route and fixing a 50c. rate on lumber over a shorter route, this Court said (p. 547):

"There has been no attempt to make an exhaustive statement of the principle involved, but in cases thus far decided, it has been settled that the orders of the Commission are final, unless (1) beyond the power which it could constitutionally exercise; or (2) beyond its statutory power; or (3) based upon a mistake of law. But questions of fact may be involved in the determination of questions of law, so that an order, regular on its face, may be set aside if it appears that (4) the rate is

so low as to be confiscatory and in violation of the constitutional prohibition against taking property without due process of law; or (5) if the Commission acted so arbitrarily and unjustly as to fix rates contrary to evidence or without evidence to support it; or (6) if the authority therein involved has been exercised in such an unreasonable manner as to cause it to be within the elementary rule that the substance, and not the shadow determines the validity of the exercise of the power. Int. Com. Com. vs. Ill. Cent., 215 U. S. 452, 470; Southern Pacific vs. Int. Com. Com., 219 U. S. 433; Int. Com. Com. vs. Northern Pacific, 216 U. S. 538, 544; Int. Com. Com. vs. Alabama Midland Ry. Co., 168 U. S. 144, 174.

"In determining these mixed questions of law and fact, the Court confines itself to the ultimate question as to whether the Commission acted within its power. It will not consider the expediency or wisdom of the order, or whether, on like testimony it would have made a similar ruling. 'The findings of the Commission are made by law *prima facie* true, and this Court has ascribed to them the strength due to the judgment of a tribunal appointed by law and informed by experience.' Ill. Cent. vs. I. C. C., 206 U. S. 441. Its conclusion, of course, is subject to review, but when supported by evidence is accepted as final; not that its decision, involving as it does so many and such vast public interests, can be supported by a mere scintilla of proof—but the Courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order."

To the same effect is the decision of this Court in 227 U. S. 88:

"The order of the Commission," the Court said, (p. 100), "restoring a local rate that had been in force for many years, and making a corresponding reduction in the through rate, was not arbitrary, but sustained by substantial, though conflicting evidence. The courts cannot settle the conflict nor put their judgment against that of the rate making body."

"In a case like the present," the Court also said in a previous part of its opinion (p. 92), "the Courts will not review the Commission's conclusions of fact (Int. Comm. Comm. vs. Delaware, Etc., Ry., 220 U. S. 235, 251), by passing upon the credibility of witnesses, or conflicts in the testimony."

In the case of the M. St. P. & S. S. M. R. Co. vs. R. R. Com., 136 Wis. 146, the statutory law of Wisconsin provided that, in all trials involving orders of the Railroad Commission of Wisconsin—a Commission closely similar to the Public Service Commission of Maryland—the burden of proof should be upon the plaintiff to show by clear and satisfactory evidence that the order of the Commission complained of was unlawful or unreasonable, as the case might be.

"The function of the Court," the Court said in that case, "is not to determine whether a rate or service fixed by it is reasonable and just, but to determine whether the order is unreasonable or unlawful. If the order be found by the Court to be such that reasonable men might well differ as to its correctness, it cannot be said to be unreasonable."

This Court can not, under the guise of exerting judicial power, usurp merely administrative functions by setting aside a lawful administrative order upon its conception as

to whether the administrative power has been wisely exercised.

Int. Com. Com. vs. Ill. Cent. R. R. 215, 452, 470.

So stringent are the rules against interference with the action of local authorities in fixing rates that it has been said that this Court should not enjoin a rate unless it can say "that it was impossible for a fair-minded board to come to the result which was reached."

Knoxville vs. Water Co. 212 U. S. 1, 17.

In the light of these decisions, we cannot see how the Court of Appeals of Maryland could reasonably have reached any other conclusion than that the plaintiff in error had failed to meet "the burden of proof" imposed upon him by Sec. 46 of the Public Service Commission Law of Maryland "to show by clear and satisfactory evidence" that the order of the Commission complained of was unreasonable.

EIGHTH ASSIGNMENT OF ERROR.

This assignment of error has been discussed by us in discussing the next preceding assignment of error.

NINTH ASSIGNMENT OF ERROR.

This assignment of error has been discussed by us in discussing the fourth assignment of error.

ADDITIONAL POINTS.

The proposed schedules of the plaintiff in error are but the last step in the abandonment of the liberal and wise policy by which the Northern Central Railway Company built up a large suburban passenger and freight patronage for itself. A few years ago the Company allowed one of its suburban

patrons to have a package of merchandise, purchased by him or a member of his family in the shopping districts of Baltimore, sent to Calvert Station in Baltimore, and to have it carried thence free of charge to the station of the purchaser. Some eight or ten years ago this privilege was withdrawn, and a charge for such packages was established by the Northern Central Railway Company. While the package privilege existed, the suburban patron also enjoyed the privilege of having his groceries, marketing and laundry hampers carried to his station from Baltimore free of charge. After the withdrawal of the package privilege, these privileges, too, were one after the other withdrawn, first the grocery privilege, then the laundry privilege, and last of all the marketing privilege. (Testimony of Robert Fusselbaugh—Record, p. 105). It was by them, along with commuted rates of transportation for the passenger himself, that hundreds of citizens were, like this witness, induced to exchange Baltimore as a place of residence for the vicinage of Baltimore on the Northern Central Railway lines. They, with the reduced railroad fares, were the bait by which most of the suburban patrons of that railway were drawn to their present homes. Now that the commutation fares, too, have been largely increased, the bait is gone, and nothing but the naked hook remains. Residents of Baltimore County on the line of the Northern Central Railway have changed their domicile from the city to the country, built homes and given innumerable pledges to fortune of one sort or another in the ordering of their lives on the strength of the belief that the Northern Central Railway Company, after enticing them to the country, would not desert its liberal policy towards its commuters simply because a selfish advantage could be gained by so doing, when they were too firmly established in their surroundings to be readily transplanted; and now these suburban residents find themselves deprived of almost every railway privilege which tempted them to become commuters.

It may justly be conceded that the operating expenses of railroads as well as the living expenses of individuals have been enhanced by recent economic conditions, and that the railroads should be allowed a reasonable increase of rates. In their interstate relations they *have been* lately allowed such a reasonable increase in their freight charges by the Interstate Commerce Commission, namely, an increase of 5%. And the plaintiff in error, as the lessor of the Northern Central Railway Company, has lately been allowed the same increase by the Public Service Commission of Maryland. But the proposed passenger schedules of the Pennsylvania Railroad for the Northern Central Railway work an increase in comparison with which this 5% increase is a light burden indeed. Not only do these schedules abolish the excursion ticket and likewise the 100 trip ticket, the most useful and convenient of all the commutation tickets, included in the old schedules (testimony of DeLong—Record, p. 29), but they increase the cost of the remaining commutation tickets included in the old schedules to some suburban residents, according to the particular tickets used by them, to the extent of, say, 30, 33 or 50 per cent (Letter of Clayton C. Hall, Record, p. 97, and testimony of Alfred Tyler, Record, p. 104). Take as an illustration this example, the value of which can be easily tested by fixed facts that are a part of the Record in this case. The head of a family residing at Ruxton, in Baltimore County, Maryland, on the Northern Central Railway about nine miles from Baltimore City, buys 4 three months' tickets at \$14.15 each per year, a total of \$56.69. If the rate is increased to \$16.50 as the plaintiff in error proposes, the total cost would be \$66.00, an increase of nearly 17%. His wife averages two one-hundred trip tickets per year, cost \$21.00. With this form of ticket discontinued as the plaintiff in error proposes, she would be compelled to buy 20 ten trip tickets at \$1.89, a total of \$37.80 and an increase of 80%. Other members of the family use 150 trip tickets costing \$22.95. At the rate pro-

posed by the plaintiff in error they would cost \$28.35, an increase of nearly 24 per cent. The transportation, therefore, of such a commuter, which now averages \$100.55, would cost, if the increases proposed by the plaintiff in error were allowed, \$132.15, an increase of more than 31%.

In comparing the stress of such an increase as this with that of the 5% freight increase recently allowed by the Interstate Commerce Commission, it should be recollected that many heavy commodities such as brick, coal, coke, iron ore and the like carried by the railroads of the country were excepted from the benefits of that increase. The increase proposed by the proposed schedules for the Northern Central Railway Company are all the more significant when it is remembered that the railroads of the country have never counted upon making any but a limited profit from their passenger service as considered separately from their freight service. In their application to the Interstate Commerce Commission for the 5% freight increase rate, they did not ask for an increase of passenger rates at all. The advantages derived by them from carrying passengers are mainly indirect advantages, reflected in the fact that the freight traffic on their lines is dependent for its volume upon the facilities afforded by them for the personal intercourse and commerce of the human beings who create the freight to be carried. To use the current expression, railroads in their passenger operations expect little more at the most than to "split even". In the Interstate Commerce Commission 5% Case, decided July 29, 1914, and December 16, 1914, (31 I. C. C. 351 and 32 I. C. C. 325), the Commission, after calling attention to a statement, showing that the passenger service on the New York, New Haven and Hartford Railroad consumed approximately 100 per cent of its passenger train revenue, observed: "The relative results of the freight and passenger train business on the New Haven are not exceptional. Rail-

road cost accounting is still largely undeveloped, and most of the carriers have not even undertaken to separate operating expenses as between the freight and the passenger service. Any results submitted must be used therefore with caution. But it is significant that, with a single exception, every railroad in official classification territory that has undertaken to separate the freight and passenger expenses shows that in 1913 the passenger service was relatively much less profitable than its freight service" (31 I. C. C. 387). The plaintiff in error, the Pennsylvania Railroad itself, earned in 1911 on its property devoted to its passenger train service much less than one-half of one per cent, while it earned on its property devoted to its freight train service 7.9 per cent. *Id.* 389. It may be safely said, therefore, that the railroads of the country have either expected to earn no, or only a very moderate, profit on their passenger service, separately considered. They operate their passenger service mainly for the benefit of their freight service or as a concession to the public convenience that they must make to justify the enjoyment of the quasi-public function that they exercise in transporting freight.

The long period of time during which the old passenger schedules of the Northern Central Railroad were in force is the best illustration of the secondary importance attaching to the passenger service of a railroad as a source of net revenue. How is it that after such a lengthy stretch of time during which the Northern Central Railway was apparently satisfied with these passenger schedules the Pennsylvania Railroad should all at once awaken to the necessity of an increase of passenger rates, and thereupon increase them in terms of 30 and 50 per cent? Partly, of course, because the expenses of railroads have kept pace with the enhanced cost of living that has been brought home to every household in the land, but this increase of expense which the Interstate Commerce Commission thought justified a 5% increase of

many, though not all, freight rates has certainly not been marked enough to warrant a 30 or 50 per cent increase in passenger rates. Especially is this true of such a property as the Northern Central Railway. The increased cost of living and industrial operation of which so much is heard at the present time is a matter of some years' duration. Yet not only has the Northern Central Railway within that time declared a stock dividend of 40%, but the Pennsylvania Railroad has recently, as the Record shows, accepted a lease of its lines from it with the obligation to pay for 999 years a dividend of 8% each year upon its entire capital stock including this stock dividend (or a dividend of 11.2% upon the stock of the lessor exclusive of this stock dividend). (Testimony of F. J. Fell, Record, p. 57; Letter of Clayton C. Hall, *Id.* p. 96.)

Not to go further back a cash dividend of 8% has been paid upon the stock of the Northern Central Railway Company every year since 1900 (testimony of F. J. Fell, Record, p. 57), though a large part of its earnings properly applicable to dividends were all the time being diverted to capital purposes. Throughout this period all or most of the present passenger fares and tickets have been in force. The 100-trip ticket, which is now proposed to be abolished, has been in existence for 18 years (Testimony of DeLong, Record, p. 23). It is, as we have said, the favorite commutation ticket. Nor should it be forgotten that, if the expense of operating the Northern Central Railway has increased over its expenses in the past, so has its ability to earn increased revenue been enhanced by the 5% increase in its freight rates allowed to it by the Interstate Commerce Commission and the Public Service Commission, the one in connection with interstate traffic and the other in connection with intra-state traffic. In disposing of the case before it the Public Service Commission did not approve the proposed schedules of the Pennsylvania Railroad, nor did it re-establish the old

schedules of the Northern Central Railway without material alterations. It modified the proposed schedules in such a way as to give the Railroad Company additional revenue without revolutionizing the conditions to which the several passenger tickets issued by the Northern Central Railway had been carefully adapted. It restored the 100-trip ticket because of the wide range of wants that it satisfied on the part of commuters who keep up a close and yet not unbroken connection with the city, and who could not be fairly asked to deny themselves all recourse except that of gambling in the chances of a monthly or quarterly ticket which is good only for the month or quarter within which issued, and will never, or but rarely, be used up while there is such a thing as a vacation, absence for business reasons or the hand of disease or death in the world.

In its opinion (Ree., p. 156), the Court of Appeals of Maryland says that it was perhaps unfortunate that the order of the Public Service Commission of Maryland should have provided that it should continue in force for a period of ten years unless earlier modified or abrogated by the Commission. It would have been far better, the Court thought, to have "avoided even the impression of determining in advance the effect of a new scheme of rates for a definite period of time." The learned Court apparently overlooked the fact that by Section 11 of the Public Service Commission Law of Maryland (now contained in Sec. 423 of Art. 23 of Bagby's Annotated Code of Maryland) it is provided as follows:

"Every order of the Commission shall take effect at a time therein specified and *shall continue in force for a period therein designated unless earlier modified or abrogated by the Commission*, or unless such order be unauthorized by this Act, or be in violation of the provisions of the constitution of the State or of the United States."

The Public Service Commission of Maryland, therefore, was bound by the express terms of the very law under which it was acting to fix a specific period for the duration of its order; nor under the circumstances can we see that it was a matter of any practical importance whether the life of the order was to be ten years or a shorter period of time. To begin with, by the terms of the order of the Commission of December 23, 1914, its order of December 21, 1914, was not to continue in force for a period of ten years unconditionally, but only in case it was not earlier modified or abrogated by the Commission (Record, p. 16). In other words, the Commission can pursuant to its own express reservation, modify or revoke its first order of December 21, 1914, at any time before the expiration of ten years either *sua sponte*, or upon the application of the plaintiff in error. And this would be equally true, even if the Commission had not by its second order retained express control of its first order during the whole period of ten years; for it is important to bear in mind that the Public Service Commission of Maryland is not a Court, as incompetent as is the suitor himself to set aside or alter its orders after the efflux of periods of time prescribed by law for rehearing or review. Its proceedings are always *in fieri*. Its orders work no estoppel of record in the judicial sense; nothing determined by it is *res adjudicata* except so far as it chooses from general principles of human consistency or constancy to allow it to be such. It can pass an order and revoke it the next week, the next month, or the next year, of its own initiative, or upon the complaint of a citizen or public service corporation. It could just as well have made the life of its first order in the present case twenty years as ten years. The inflexibility of judicial procedure is repugnant to its system of administrative procedure, which should be left free to recall or alter its mandates from time to time with changes in transportation and industrial conditions. Independently of the terms of the decision of the Court of Appeals of Maryland in the

present case, should the first order of the Commission turn out, as time goes on, and before the expiration of the ten year period to have worked an injustice to the plaintiff in error, all that the plaintiff in error would have to do, whether the order had been in force one year, or five years, or nine years, would be to apply to the Commission on the strength of the changed circumstances for a modification of the order. But it is observable that the Court of Appeals of Maryland, in affirming the decree of the Circuit Court No. 2 of Baltimore City in the present case, declared that, in doing so, it was with a reservation of the right to the plaintiff in error, after the lapse of a reasonable time, to apply to the Commission for a rescission or modification of its order after experience should have demonstrated that the revenue derived from the tariff established by the Commission was not properly compensatory for the service performed. (Record, p. 156.)

We affirm with confidence that the Court of Appeals of Maryland in approving the decree of the Circuit Court No. 2 of Baltimore City in the present case, arrived at a conclusion in every respect unassailable. This conclusion violated no constitutional principle or statutory provision; and is altogether free from the stigma of unreasonableness as defined by the decisions of this Court. It is correctly based, as was the action of the Court of Appeals of Maryland, upon the view that the plaintiff in error had failed to meet the burden imposed upon him by the Public Service Commission Law of Maryland of showing by proper tabulations and apportionments, and by the proper allowance for the larger volume of revenue that is likely to result from the increased rates, authorized by the order of the Public Service Commission of Maryland, that the plaintiff in error will be unable to earn a fair and reasonable return upon its passenger traffic on the Northern Central Railway lines within the State of Maryland (Record, pp. 151, 152, 154).

Nevertheless, out of industrious tenderness for the rights of the plaintiff in error, the decree of the Court of Appeals of Maryland affirmed the decree of the Circuit Court No. 2 of Baltimore City only with the understanding that whether its action was to be final was to depend upon the actual results that would be brought home to the plaintiff in error by the practical workings of the schedule of rates prescribed by the Public Service Commission of Maryland. If the plaintiff in error is dissatisfied with such a moderate judgment as this, it must be because it is unwilling to subject its pretensions to the test of actual trial. From first to last in the present case, it should be remembered that the Public Service Commission of Maryland has not refused to allow the increased rates for which the plaintiff in error contends, but has allowed them, though with modifications. The exact effect of these modifications will soon become manifest. In providing for a period of actual probation in its decree, the Court of Appeals of Maryland, of course, merely followed the example set by this Court and other Federal courts as will appear, to go no further, by reference to the opinion of the Court of Appeals of Maryland in the Record, pp. 154, 155.

No error, we submit, was committed by that Court in affirming the decree of the Circuit Court No. 2 of Baltimore City sustaining the demurrer of the defendants in error to the bill of complaint of the plaintiff in error.

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torney of the Defendants in Error.*